

FAIR INSURANCE PRACTICES ACT

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

ON

S. 2204

TO PROMOTE INTERSTATE COMMERCE BY PROHIBITING DISCRIMINATION IN THE WRITING AND ~~SELLING~~ OF INSURANCE CONTRACTS, AND FOR OTHER PURPOSES

JULY 15, 1982

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FAIR INSURANCE PRACTICES ACT

THURSDAY, JULY 15, 1982

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met, pursuant to notice, at 9:05 a.m. in room 235, Russell Senate Office Building, Hon. Bob Packwood (chairman of the committee) presiding.

Staff members assigned to this hearing: Cindy Douglass, staff counsel; and Michael J. Mullen, minority staff counsel.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order, please.

We are here this morning to hear testimony on S. 2204, a bill introduced by Senator Hatfield and myself that relates to discrimination in the insurance industry. The bill as introduced uses the words that we are all familiar with in other civil rights acts of the United States, and it extends those prohibitions on discrimination for those reasons to the selling of insurance.

It is very clear from the witness list and from the testimony, that one of the areas most highlighted is discrimination based on sex in insurance. From my standpoint, the questions that I am interested in discussing and pursuing are: Is there discrimination? Is it illegal or should it be illegal? When we use the word "discriminating," that is as often used as a flattering term, as well as an unflattering term. Is there a justifiable reason for the discrimination, if there is discrimination?

If there is no justifiable reason, should the Federal Government involve themselves when insurance has been historically regulated by the States rather than the Federal Government? Are the States, if it is unjustifiable discrimination, meeting the problem?

There is a panoply of issues.

[The bill follows:]

S. 2204

To promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 15 (legislative day, FEBRUARY 22), 1982

Mr. HATFIELD (for himself and Mr. PACKWOOD) introduced the following bill, which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*
3 That this Act may be cited as the "Fair Insurance Practices
4 Act".

FINDINGS AND POLICY

6 SEC. 2. (a) The Congress finds that discrimination based
7 on race, color, religion, sex, or national origin, by any insurer
8 which is engaged in commerce or whose activities affect com-
9 merce, in connection with any application for, or the terms,

1 conditions, rates, benefits, or requirements of insurance poli-
2 cies and contracts (including annuity or pension contracts) (1)
3 burdens the commerce of the Nation, (2) impairs the
4 economic welfare of large numbers of consumers who rely on
5 the protection of such policies and contracts, (3) constitutes
6 an unfair trade practice which adversely affects commerce,
7 and (4) makes it difficult for employers to comply with Feder-
8 al laws prohibiting such discrimination against their employ-
9 ees.

10 (b) The Congress therefore declares that it is the policy
11 of the United States that no insurer shall, on the basis of the
12 race, color, religion, sex, or national origin of any individual
13 or group of persons, (1) refuse to make insurance available to
14 any applicant for insurance, (2) with respect to insurance
15 contracts to which this Act applies, treat any such applicant
16 or insured differently than any other applicant or insured
17 with respect to the terms, conditions, rates, benefits, or re-
18 quirements of any such insurance contract, or (3) commit any
19 other discriminatory action prohibited by this Act. It is fur-
20 ther the policy of the Congress that this Act shall not affect
21 the responsibility and authority of States to regulate the busi-
22 ness of insurance, or any regulation or order of any State
23 agency concerning or applicable to the business of insurance,
24 if such regulation or order is consistent with and does not
25 prevent compliance with this Act.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) The term “commerce” means trade, traffic, commerce, transportation, transmission, or communication between a place in a State and any place outside thereof; or within the District of Columbia or a territory or possession of the United States; or between points in the same State but through a point outside thereof.

(2) The term “discriminatory action” means action by an insurer which is unlawful under this Act and contrary to the policy stated in section 2.

(3) The term “insurance” means any arrangement (whether by contract, policy, binder, reinsurance, or otherwise) whereby an insurer (including any governmental agency) will provide benefits (whether by reimbursement, periodic or lump-sum payments, or otherwise) in case specified events occur in connection with death, disability, medical conditions, attainment of specified age, retirement from employment, economic loss, theft, or other events customarily dealt with in insurance policies and contracts (including annuity or pension contracts) relating to life, accident and casualty, theft, retirement, liability, health, disability, or economic loss.

1 (4) The term "insured" means any person who is
2 insured under, or is or may be an applicant for insur-
3 ance under, a contract of insurance issued or to be
4 issued by the insurer.

5 (5) The term "insurer" means any person (A) who
6 provides insurance to others or otherwise engages in
7 the business of insurance and (B) whose activities (i)
8 affect commerce, (ii) utilize facilities of the United
9 States Postal Service, (iii) utilize any facilities used in
10 commerce by any person, or (iv) result in a discrimina-
11 tory action carried on under color of any law, statute,
12 ordinance, or regulation, or required, permitted, or
13 sanctioned, or supported with funds provided, by the
14 United States, any State or political subdivision, or any
15 agency or officer thereof; and includes such person's
16 agent.

17 (6) The term "activities affect commerce" means
18 any activity which directly or indirectly relates to, im-
19 pinges upon, or involves any activity in commerce, and
20 includes any governmental activity.

21 (7) The term "person" includes one or more indi-
22 viduals, governments, and agencies of the United
23 States or of any State or political subdivision thereof,
24 labor unions, partnerships, associations, corporations,
25 legal representatives, mutual companies, joint ventures,

1 joint stock companies, societies, trusts, unincorporated
2 organizations, trustees, trustees in bankruptcy, receivers,
3 and fiduciaries.

4 (8) The term "sex" means the gender of the insured and includes pregnancy, childbirth, or related
5 medical conditions of a female insured, except that
6 nothing in this Act shall be deemed to amend section
7 701(k) of the Civil Rights Act of 1964.

8 (9) The term "State" includes a State of the
9 United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession
10 of the United States.

11 UNLAWFUL DISCRIMINATORY ACTIONS

12 SEC. 4. (a) It shall be unlawful discriminatory action for
13 any insurer, because of the race, color, religion, sex, or national origin of any person or any group of persons, to do any
14 of the following with respect to any person who after the
15 effective date of this Act applies or may apply for a contract
16 of insurance or is an insured under a contract of insurance
17 made after the effective date of this Act—

18 (1) to refuse to make, or to refuse to negotiate, or
19 otherwise make unavailable or deny, or delay receiving
20 and processing an application for, a contract of insurance of the type ordinarily made by such insurer; and

1 (2) to treat such applicant or insured differently
2 than the insurer treats or would treat any other appli-
3 cant or insured with respect to the terms, conditions,
4 rates, benefits, or requirements of such insurance con-
5 tract.

6 (b) It shall be an unlawful discriminatory action for any
7 insurer—

8 (1) to utilize any statistical table (whether of mor-
9 tality, life expectancy, morbidity, disability, disability
10 termination, or losses) or any other statistical compila-
11 tion as a basis for any action which is contrary to this
12 section;

13 (2) to discriminate in any manner against any
14 person because such person has opposed any practice
15 made unlawful by this Act or because such person has
16 made a charge, testified, assisted, or participated in
17 any manner in an investigation, proceeding, hearing, or
18 litigation under this Act; or

19 (3) to make, print, or publish, or cause to be
20 made, printed, or published, any notice, statement, or
21 advertisement, relating to insurance coverage that such
22 insurer provides or will provide, indicating any prefer-
23 ence, limitation, specification, or discrimination based
24 on the race, color, religion, sex, or national origin of
25 any person or group of persons, or an intention to

1 make any such preference, limitation, specification, or
2 discrimination.

3 (c) With respect to all contracts of insurance existing on
4 the date this Act becomes effective—

5 (1) it shall be an unlawful discriminatory action
6 for any insurer after the effective date of this Act—

7 (A) to charge or collect premium payments
8 or contributions which become due after the effec-
9 tive date of this Act; or

10 (B) to determine the amount of or to pay to
11 any insured or other beneficiary under an insur-
12 ance, annuity, or pension contract any periodic or
13 lump-sum payment after the effective date of this
14 Act;

15 if such charge, collection, determination, or payment, is
16 based, directly or indirectly, either on race, color, reli-
17 gion, sex, or national origin of any person or group of
18 persons, or on any statistical table whose use would, if
19 applied to contracts made after the effective date of
20 this Act, violate any provision of this section; and

21 (2) the insurer may modify the premium and con-
22 tribution rates and may increase but not decrease the
23 periodic and lump-sum payments under such existing
24 contracts insofar as they are due after the effective
25 date of this Act, if clearly necessary to comply with

1 the nondiscrimination requirements of this Act (and if
2 the State agency having jurisdiction to regulate the
3 business of insurance concurs that the modification re-
4 quested by the insurer is clearly necessary to comply
5 with such requirements and authorizes such modifica-
6 tion), but such insurer need not refund any portion of
7 the premiums and contributions which were payable to
8 the insurer prior to the effective date of this Act nor
9 pay any additional amounts for the benefits which were
10 payable by the insurer prior to the effective date of this
11 Act.

12 (d) Nothing in this Act shall be deemed to prevent an
13 insurer who regularly provides insurance coverage solely to
14 persons of a single religious affiliation from continuing to pro-
15 vide insurance solely to persons of that religious affiliation.

16 INAPPLICABILITY

17 SEC. 5. Nothing in this Act shall be deemed to—

18 (1) modify any provision in the Social Security
19 Act;

20 (2) modify any provision in any law or Executive
21 order prohibiting discrimination in employment on the
22 basis of an individual's race, color, religion, sex, or na-
23 tional origin, or in any rule, regulation, order or agree-
24 ment under such law or Executive order; or

1 (3) exempt or relieve any person from any liabili-
2 ty, duty, penalty, or punishment under any present or
3 future law of any State or political subdivision thereof,
4 other than any such law which purports to require or
5 permit the doing of any act which would be a discrimi-
6 natory action under this Act.

7 EFFECTIVE DATE

8 SEC. 6. This Act shall become effective on the ninetieth
9 day after the date of the enactment of this Act.

○

The CHAIRMAN. I am delighted to be joined by my senior colleague from Oregon, a friend of mine of 35 years standing, my teacher in college, and one of my oldest friends in or out of politics, Senator Mark Hatfield.

**STATEMENT OF HON. MARK HATFIELD, U.S. SENATOR FROM
OREGON**

Senator HATFIELD. Thank you very much, Mr. Chairman. It is indeed a pleasure to join you once again in a common cause of righting an injustice that is widely practiced in our society.

I would be prone to reminisce a bit over the many years, in State government and now in the Federal Government, in which you and I have joined in such causes. It is indeed a pleasure to be here before your committee this morning.

I am proud of the fact that this is perhaps a part of the heritage that you and I share in Oregon. Oregon has been in the vanguard of many actions which remove discrimination from long-time practice in the field of housing, in the field of employment, in the field of public accommodations, in the field of migratory labor and many other areas. Even in the far West we had engaged in such practices for much too long I am proud to have been a part of the action to remove them.

Today, in line with this effort of long standing, I am happy to testify on behalf of our bill S. 2204, the Fair Insurance Practices Act, which I first introduced in 1979. And I am happy to have this hearing today.

Mr. Chairman, to answer one of your first questions, I think it is very important to put it into context. Today, the economic plight of American women is really greater than it was a few decades ago. This is not something that is correcting itself, but rather the gap is widening. In the last 50 years the number of families headed by women has tripled.

One out of three of these families which depend on women for their sole source of support live below the poverty line. Today, women constitute 42 percent of the labor force, yet they comprise over 66 percent of those people living in poverty.

Older women are the fastest growing poverty group in America today, and women in general earn only 59 percent of what men earn.

I think we must recognize that insurance for many of these same individuals—whether they are single heads of household, widows, or low income wage-earners—is no longer a luxury, but an economic necessity.

The Fair Insurances Practices Act simply demands of the insurance industry the preservation of the same principles of nondiscrimination which we have stated as a matter of public policy in areas of housing, credit, education and employment.

Frankly, Mr. Chairman, I find it indefensible and totally confusing that the insurance sector can tout, as it does in several instances in its written testimony before your committee today—and let me quote one such statement which is very typical of the insurance industry's attitude:

Were it not for the inclusion of "sex discrimination", S. 2204 would address no practices whatsoever which are a day to day part of the insurance business. The race, color, religion or national origin of a prospective policyholder does not enter in any way into a company's underwriting judgment or pricing system.

This is from the Alliance of American Insurers.

Mr. Chairman, I fail to understand on what grounds the insurance industry can label as unacceptable, discrimination against an individual's race, color, religion or national origin, while at the same time claiming that discrimination based on sex is an acceptable practice. What is different about a person's gender that would not apply to other immutable characteristics such as these?

Let me give you some examples. For instance, it is clear that mortality rates for those of the Mormon faith are substantially lower than those of the general population. Yet, the insurance industry does not use religion as a classification in rates. The mortality rates of white males as a group are lower than those of black males as a group. Yet the insurance industry does not use national origin or race as a classification in rates.

I recognize that this concept of using sex as a classifier is vigorously opposed by the industry on the basis that it is not unfair discrimination, that the principle of insurance is dividing individuals into groups. I do not agree with that premise, for to divide individuals into groups on the basis of immutable characteristics is truly unfair.

I would like to cite, however, a few examples which go beyond that philosophical dispute to "unfairness" as the industry describes it. Too often, the insurance community has placed the female in double jeopardy simply because of her sex.

Recent investigations have demonstrated that some employer-sponsored life insurance charged women more for pension coverage on the assumption that they would live longer, but charged them as much as men for life insurance. They thus ignored sex differences when they would have helped women. Some companies make a smaller allowance for sex differences in life insurance, where the difference helps women, than in annuities, where the difference helps men. That to me is double jeopardy.

It is well-known that many individual disability policies do not include maternity, yet maternity is included in the justification for higher rates cited by some of those same companies. Double jeopardy.

Actuarial statistics, when available, are used to justify higher rates for women in various insurance policies. When no actuarial statistics on women are available for particular categories of insurance, such as disability insurance for a female physician, higher rates are still charged on the basis that no studies have yet been done. Double jeopardy.

Behavioral classifications, such as smoking or obesity, are more clearly related to mortality than sex or race. Yet gender is given greater weight as a causality factor in death than characteristics over which individuals have some amount of choice. That again is double jeopardy.

In my view, Mr. Chairman, these problem areas as well as others have been inadequately addressed, if not ignored, by the insurance industry.

Let me note historically that by and large most of these sex discrimination policies have been created since the 1950's. So I do not know how long insurance could have justified the neutral matter on sex. Yet in the boardroom somewhere in the 1950's they decided gender was a very important item to start including.

In numerous personal discussions with members of the insurance community, as well as examinations of three hearings which have been held in Congress on this issue, I have failed to hear a satisfactory answer to claims such as the ones I have just cited. I genuinely hope that those who testify in opposition to this bill today will be willing to undertake a real dialogue on the issues raised.

Mr. Chairman, along with you, I regret to say that the failure of the equal rights amendment makes it even more incumbent on Congress to act with haste on this legislation. I commend you for calling this hearing today, for educating the public on the economic inequities created by such policies, and for reminding the insurance community that this issue will not go away until it is fairly addressed.

I wish that this Federal legislation was unnecessary. And frankly, if the States were in the process of acting, I would withdraw it. However, that action is not taking place and the States have been too long in addressing this issue. Therefore, the consequences, for women particularly, are far too great to postpone this action any longer.

The CHAIRMAN. I would commend you and the other 50 Senators, 51 yesterday, in reintroducing the equal rights amendment. In one way or another, that is going to pass. In one way or another, we are going to get equal rights for women. Time is on our side on this issue. The history of civil liberties is slow, but it is sure, and they will be expanded.

Senator, I think you have raised questions that I hope the insurance industry will respond to when they testify today. I, like you, have read their statements and a number of questions pop up. Are the tables they use for women even accurate to begin with? Assuming you could justify the discrimination, are the tables accurate?

Senator HATFIELD. I do not think they are, and let me tell you one reason why. They say that, for instance, women outlive men. That is a general statement that is made and usually accepted, that women outlive men. Yet 85 percent of the men live as long as women, or 85 percent of the women live as long as men, however you want to put it. The 15 percent is what distorts the whole picture. But the general assumption is that all women outlive men, whereas actually it is less than 15 percent, according to studies presented before the Supreme Court in the *Manhart* case.

And yet, those rates again are applied to all women across the board. That is an example where I think you can prove anything with statistics or figures.

The CHAIRMAN. Well, you raised the point with Mormons. Clearly, if you want to discriminate between men, whether or not you are a Mormon is an easily determinable factor, on that quality alone you could distinguish insurance tables for men. On black and white you could distinguish in terms of insurance. But we do not, and yet the civil rights laws do not prohibit the insurance companies, if they wanted, from distinguishing on that basis. They simply

do not because as a matter of policy they say it is unfair, that is correct, and it is to their credit that they do not.

Yet, those are factors as easily deducible as men and women. Whether you live in Wyoming or New York is a factor that is easily deducible, and you live longer in Wyoming. Why the discrimination on the basis of sex and not on other factors equally as obvious?

Senator HATFIELD. Well, the justification for discrimination is I think very appropriate when it is applied to such things as whether a person is a smoker or a nonsmoker, whether a person is in shape or has the problems of obesity, whether a person's recreational activities are such that they have high risk factors or less risk factors.

There are many factors there that are appropriate for insurance companies to consider as far as measuring longevity and the odds of longevity, on these things that we can control ourselves. I see no reason why they should not have actuarial studies and have them reflected in the rates that they charge their customers. However, those rates should be based upon those factors that are controllable or that apply to men and women alike. That is perfectly justifiable.

But not on the basis of their race, religion, origin or sex.

The CHAIRMAN. Mark, I have no more questions. I will just say again to the audience that Mark and I have been working together for the better part of 35 years. And I will say publicly, I hope you and I have another 10 to 12 years of working together in the Senate.

Senator HATFIELD. Thank you. I hope you have many more years of public life. Thank you.

The CHAIRMAN. Next we will take Hon. Clarence Pendleton, Chairman of the Civil Rights Commission.

Good morning, Mr. Chairman.

Mr. PENDLETON. Good morning, Senator, how are you.

The CHAIRMAN. Good. Thank you.

I might say to the witnesses—and you were very good about getting your testimony in ahead of time and your summaries—I have read it all. I have read the testimony in its entirety and the summaries.

I am going to run this hearing right through the lunch hour. To the extent that you can abbreviate your testimony, it will be helpful. It will all be in the record. And I fear we may be interrupted with a vote or two this morning, but you do not need for my benefit to read your testimony verbatim. It will be in the record and I have read it.

Mr. Chairman, go right ahead.

**STATEMENT OF HON. CLARENCE M. PENDLETON, JR., CHAIRMAN,
U.S. COMMISSION ON CIVIL RIGHTS, ACCOMPANIED BY PAUL
ALEXANDER, ACTING GENERAL COUNSEL; AND SALLY KNACK,
OFFICE OF PROGRAM AND POLICY REVIEW**

Mr. PENDLETON. Thank you, Senator.

I think, in response to your request, we will give our summary as opposed to giving the full testimony, and that will give other people a chance to have some of the time.

The CHAIRMAN. Thank you.

Mr. PENDLETON. My name is Clarence M. Pendleton, Jr. I am Chairman of the U.S. Commission on Civil Rights. Today I am accompanied by Paul Alexander, our Acting General Counsel, and Sally Knack of the Office of Program and Policy Review.

The Commission is pleased to respond to your request for testimony on S. 2204, the Fair Insurance Practices Act. S. 2204 seeks to achieve goals with which the U.S. Commission on Civil Rights concurs. The bill would close gaps in legal protections not now provided by State insurance laws. It would prohibit the use of sex in ratemaking, as is now openly allowed by State law, and preclude the use of race, national origin, and religion as risk classification criteria, which many States have permitted by law. It would also make discrimination in underwriting unlawful throughout the United States, rather than in the minority of States that now offer this protection. And finally, it would bar race, ethnic, religious, and sex discrimination in advertising, an issue upon which State insurance laws are silent.

Although the Commission generally supports S. 2204, we feel that it would be greatly strengthened by the addition of enforcement provisions. It has long been the Commission's experience that without adequate enforcement mechanisms, legal protections for minorities and women frequently continue to be denied or abridged. We urge that the bill be amended to provide for enforcement.

Since insurance is now regulated by States, deferral to State law where it conforms to Federal standards and where adequate State agencies with the necessary authority exist is advisable. However, in the event that State insurance laws do not provide the protections of this bill or grant State insurance departments authority comparable to the standards that would be expected under S. 2204, or if the proper agency fails to provide a remedy within the specified period, complainants should be permitted to file suit in Federal district court. Finally, the U.S. Attorney General should be empowered to initiate pattern or practice suits.

In conclusion, the U.S. Commission on Civil Rights regards classifications on the basis of race, national origin, religion, and sex as inherently unfair and generally supports S. 2204. To be effective, however, strong enforcement mechanisms need to be added to the bill. A law with no avenues of enforcement will do little for minorities and women, who are not now equally served by the insurance industry.

That concludes my statement, Mr. Chairman.

The CHAIRMAN. Mr. Chairman, over the past 20 years we have passed a variety of Federal civil rights acts, the 1964 act on employment, 1968 act on discrimination in housing, and more recently than that, the Equal Opportunity in Credit and Finance Act.

In looking at this audience, my hunch is that there are a fair number of women in this audience who have gone through the circumstance of applying for a credit card or having been recently divorced and finding that their husband got the credit card and they could not get credit. It was a bad enough national problem that we rectified it with Federal law and said you cannot discriminate on that basis.

The argument will be raised by the insurance industry that insurance is State-regulated and that regardless of whether or not there is discrimination we should not override the McCarran-Ferguson Act. We should leave it to the States to remedy discrimination if it exists and if it is unfair discrimination. What is your comment on that theory?

Mr. PENDLETON. Well, I think that where citizens do not have equal protection of the law, the Federal Government has attempted to insure that all citizens can avail themselves of their rights. That has been indicated in this bill and certainly should be carried out where that is indicated.

Mr. ALEXANDER. Well, the fact that insurance is regulated by the States is a congressional deferral, and the area of civil rights enforcement was left open to the Federal Government to enact legislation or the Federal Government could change its mind and regulate insurance generally under the commerce clause. But in the area of civil rights the important thing is that the Federal Government has a unique responsibility constitutionally to protect the rights that the 14th amendment generally recognizes.

The CHAIRMAN. Well, your statement about deferral is an accurate statement. As you recall, the Supreme Court at one time said this is commerce and it can be regulated. And then under the act we specifically said, all right, we will defer and we will allow the States to regulate at our suffrance. But I think we were saying allow them to regulate fairly. If they did, then we would not interfere.

I notice the chairman says to the extent that the State laws are adequate or they have the enforcement mechanisms that the Commission would say we could defer to the States where they had sufficient laws in power and enforcement to take care of the problem. I do not think any of us have great enthusiasm inviting Federal intrusion. Indeed, if the State is active and effective it can probably do it better than the Federal Government.

The difficult decision comes—and we have it here—what do you do when the states do not act? It is not just voting, it is not just slavery. We have said this in finance, we have said it in housing, we have said it in employment. And the question is, Should it be different from all of those in insurance?

I have no more questions. I appreciate, Mr. Chairman, your statement. I thank you for coming.

Mr. PENDLETON. Thank you.

[The statement follows:]

STATEMENT OF HON. CLARENCE M. PENDLETON, JR., CHAIRMAN, U.S. COMMISSION ON CIVIL RIGHTS

Mr. Chairman and members of the Committee, I am Clarence M. Pendleton, Jr., Chairman of the United States Commission on Civil Rights. I am accompanied today by Paul Alexander, Acting General Counsel, and Sally Knack of the Office of Program and Policy Review. The Commission is pleased to respond to your request for testimony on S. 2204, the "Fair Insurance Practices Act".

S. 2204 would make it unlawful to discriminate on the basis of race, color, religion, sex or national origin against any person or group of persons by (1) refusing to renew or issue insurance, (2) charging different rates, (3) issuing a policy carrying different terms, conditions and benefits, and (4) engaging in differential advertising practices. The bill seeks to achieve goals with which this Commission has been concerned for some time.

In April 1974, the Commission joined four other member agencies of the Equal Employment Opportunity Coordinating Committee in recommending to President Ford that legislation be introduced to clarify that Title VII of the Civil Rights Act of 1974 requires equal benefits for men and women under employer pension plans. During the Commission's November 1974 hearings on "Women and Poverty" the Commission explored, among other issues, employment discrimination in the insurance industry. Several witnesses alleged sex discrimination in hiring and promotion practices. In April 1978 the agency held a consultation on discrimination in the insurance industry as a first step in its ongoing insurance project. Participants discussed ratemaking and underwriting practices affecting minorities and women in pensions and health, life, and disability insurance. In February 1979, the six advisory committees served by our Midwest Regional Office in Chicago, presented a report to the Commission entitled *Insurance Redlining: Fact Not Fiction*, which analyzed one facet of insurance discrimination, the availability of homeowners or property insurance. More recently in June 1981, the Commission issued a statement on the Equal Rights Amendment (ERA) in which we applauded the Supreme Court of the United States' opinion in *City of Los Angeles Department of Water and Power v. Manhart* (435 U.S. 702 (1977)) barring the use of sex based actuarial tables to compute premiums in employer pension plans. The Court found these to be violative of Title VII of the Civil Rights Act of 1964.

S. 2204 will have the beneficial effect of closing gaps in legal protections now existing under the State insurance laws with which insurers are presently expected to comply. It would prohibit the use of gender-based criteria in ratemaking that is now openly allowed by State law and it would preclude the permissive use of race, national origin, and religion as risk classification criteria. It would also make discrimination in underwriting unlawful throughout the United States rather than in the several States that now offer this protection. Finally, it would bar race, ethnic, religious, and sex discrimination in advertising, an issue upon which State insurance laws are silent.

The prohibition against discrimination in underwriting is an important feature of the bill. The insurance redlining report prepared by our Midwestern regional advisory committees found evidence of adverse underwriting in predominantly minority geographic areas against both minority and white majority applicants seeking homeowners insurance. Geographic classifications were being used as a subterfuge for race discrimination. Some States have since passed anti-redlining or insurance availability laws. The Illinois insurance department also developed a consumer's guide for evaluating the condition of property for people seeking property insurance. While I was President of the San Diego Urban League, we adopted and published this guide for local homeowners and renters. More needs to be done, however, to ensure that residents of minority areas obtain needed property insurance.

In the Commission's ongoing research on health insurance, we have found that many minorities and women meeting the insurance industry's own socioeconomic and health standards of good risks, nevertheless, do not have health insurance. Thus, among persons not eligible for Medicare or Medicaid assistance, about 90 percent of the majority population has private health insurance. In contrast, about 75 percent of Hispanics, 70 percent of American Indians, and 80 percent of blacks and Asian and Pacific Island Americans are insured. Married women are more likely to have health insurance than women who are widowed, divorced, separated, or never married. Minority women, regardless of marital status, are less likely to have insurance than majority women.

S. 2204 would also prohibit the use of sex, race, national origin, and religion in ratemaking. These prohibitions would encompass both discrimination against individuals and discrimination against groups based on their composition as to race, color, sex, religion, or national origin. These, too, are important features of S. 2204.

Ratemaking in insurance involves direct classification of risks by sex but not by race, religion, or national origin. Nonetheless, according to August 1980 testimony on a House of Representatives bill similar to S. 2204, some States have indicated they would permit classification by race, national origin, or religion if insurers presented actuarial data showing that these variables were significant in estimating future losses. This same testimony noted research that exists showing religious, ethnic, and racial differences in health and life expectancy, although these differences may largely be associated with other intervening variables, such as socioeconomic status. Since actuaries are permitted some discretion in designing risk classification systems, the potential for abuse exists. In fact, in the past, insurers did charge blacks higher premiums for life insurance than whites until it was recognized that mortality rates were associated with socioeconomic variables rather than any inherent racial differences. Present State insurance laws do not uniformly or

effectively foreclose the possibility of risk classification based on race, national origin, or religion.

The Commission also supports prohibitions against gender-based ratemaking. Sex, as a risk class characteristic, does not conform to accepted classification principles. These principles stipulate, among other things, that the characteristic should be within the control of the insured, the characteristic should be related to claims cost, and the class should be reasonably homogeneous. Sex is not within the control of the individual, and sex is not always directly related to differences in claims cost. There is evidence, for example that sex differences in mortality rates are, in fact, associated with intervening environmental and behavioral variables rather than with any inherent differences between men and women. Men and women are also not homogeneous groups. As the Supreme Court of the United States observed in striking down gender-based rates in employee group pension plans: "Many women do not live as long as the average man and many men outlive the average woman". (*City of Los Angeles V. Manhart*, 435 U.S. 702, 707 (1978)).

If S. 2204 were enacted and gender-based rates were prohibited, the present system of risk calculation would provide the industry with a basis for setting premiums based on other variables. For example, in automobile insurance, premiums are also affected by the driver's driving history and the automobile's age, type, and usage.

Nevertheless, some concern has been expressed about the possible financial impact of gender-neutral rates. Some fear the industry would lose a significant part of its capacity to predict claims cost if sex were barred as a risk classification criterion, thus presumably jeopardizing the industry's financial standing. In addition, the industry has presented estimates of the potential effect on premiums that suggest substantial adjustments in rates charged to men and women in various lines of insurance. The Commission cautions you to view these issues with a jaundiced eye. The insurance industry's profit position would be damaged only if it underestimated any needed increase in premiums. Based on Congress experience in passing the Pregnancy Discrimination Act of 1978, there is reason to believe the industry's estimates would err on the high side. These overestimates would be passed on to policyholders, who would have to bear the financial burden of the insurance industry's miscalculations.

Essentially, the Commission supports the general thrust of S. 2204. However, we feel that it would be greatly strengthened by the addition of enforcement provisions. It has long been the Commission's experience that, without adequate enforcement mechanisms, legal protections for minorities and women frequently continue to be denied or abridged. We urge that the bill be amended to provide for enforcement. Since insurance is now regulated by the States, deferral to State law where it conforms to the Federal standards and where adequate State agencies with the necessary authority exists, is advisable. However, in the event that State insurance laws do not provide the protections of this bill, or grant State insurance departments authority comparable to the standards that would be expected under S. 2204, or if the proper agency fails to provide a remedy within a specified period, complainants should be permitted to file suit in Federal district court. Finally, the U.S. Attorney General should be given authority to initiate a suit if a "pattern or practice" of discrimination violative of the law is found.

You may also wish to entertain other conforming amendments to the bill. For example, S. 2204 provides that "all insurance contracts existing on the effective date of the Act will become unlawfully discriminatory if premiums or benefits are based directly or indirectly on an individual's race, color, religion, sex or national origin". Similar prohibitions against "direct and indirect" discrimination are not made applicable to new policies. Moreover, it is not clear if "indirect" discrimination is meant to prohibit the use of socioeconomic status, geographical location, health, or other variables which might have a differential impact on the average premiums paid by men and women, minorities and majorities. The Commission is particularly concerned that this be clarified. As already mentioned, the agency's Midwestern regional advisory committees have found that geographic location is apparently being used as a means of race discrimination in homeowners insurance.

S. 2204 would also give insurers only 90 days from enactment to modify premiums and benefits to come into compliance with the Act. It is not entirely clear whether insurance companies have the capability within 90 days to reestimate premiums based on sound actuarial data and principles of equity. Thus, at least initially, premium adjustments might harm the very classes sought to be protected by the law. You may, therefore, wish to reconsider this deadline.

In conclusion, the U.S. Commission on Civil Rights regards classifications on the basis of race, national origin, religion, and sex as inherently unjust and applauds

this Committee's consideration of S. 2204. To be effective, however, strong enforcement mechanisms need to be added to the bill. A law with no avenues of enforcement will do little for those minorities and women who are not now equally served by the insurance industry.

The CHAIRMAN. Next we will take Prof. Douglas Laycock from the University of Texas School of Law. Good morning, professor.

**STATEMENT OF DOUGLAS LAYCOCK, PROFESSOR, UNIVERSITY
OF TEXAS LAW SCHOOL**

Mr. LAYCOCK. Thank you, Mr. Chairman.

I was invited here today, I suppose, because for 3 years I have been working with an interdisciplinary team of lawyers and demographers on questions of sex discrimination in insurance, and I will spend my 5-minute summary focusing on how the provisions of this bill fit in with larger civil rights policy. You began the hearing by asking whether there is discrimination in insurance. Many witnesses today will say yes. The industry will say no. And the disagreement depends largely upon how one defines discrimination.

One can define it at the level of individuals, which is how our civil rights policy has traditionally defined it, or one can define it at the level of groups, and one gets quite different answers. The best way to think about that is to consider an annuity plan with 2,000 members, 1,000 men, 1,000 women, identical except for their sex. They paid in the same number of years. They all begin drawing their benefits on the same day.

Now, what the insurance industry tries to do is to make sure as near as possible—and it is never possible exactly—that the total payout to the 1,000 men considered as a group will be equal to the total payout to the 1,000 women considered as a group. With respect to sex, they say that is what is fair; that is equality at the group level. In order to do that, they will pay each of the women substantially less than they will pay each of the otherwise identical men.

The other way to achieve equality is at the individual level, to pay each man or woman the same amount if they came in at the same time and started drawing benefits at the same time. If you do that, at least on the basis of recent statistics, which are quite changeable but at least over the past few decades it will be the case that the group of women will draw more total benefits than the group of men, but you will have achieved equality at the individual level.

So one way to think about this question is where does our civil rights policy focus on equality? Do we treat each individual the same or do we try to achieve equality at the group level? For the most part the answer has been we achieve equality at the individual level.

There are a few exceptions to that and they are quite controversial. The most obvious is affirmative action quotas, where we try for remedial reasons to achieve equality at a group level. But certainly the primary traditions of our civil rights policy, the way employment discrimination laws are written, the way housing discrimination laws are written, the focus is on the individual. That is why the Supreme Court has said that in employer-sponsored insurance plans sex cannot be used as a predictor of longevity.

Now one thing the insurance industry is likely to say today in response to that analysis is: But every individual woman has a life expectancy, and her life expectancy is higher than that of an individual man of the same age, and every individual woman has an expectancy about how many auto accidents she will have and that expectancy is lower and so forth.

When you press them on what those expectancies are, they turn out to be nothing more and nothing less than the group average for the entire sex applied to the individual. It is simply another name for group averages applied to individuals. The insurance industry can use whatever groups it wants, but the logic of this bill is that certain groups that have been the basis of such offensive classifications so often misused, immutable and beyond the control of the individual, simply should not be used.

The industry and many of the States have recognized that, with respect to race, religion, and national origin. The failure to recognize it with respect to sex is simply an anomaly that has no continuing justification. To say that all women should pay more for their annuities and less for their life insurance, more for their health insurance and less for their auto insurance, is no different from saying that all blacks should be paid less in the work force because on the average at the moment blacks have lower test scores than whites.

It is no different from taking sex and race into account in other predictions of the future: Parole success, credit repayments, academic success, there are all kinds of imponderable predictions of the future that correlate with race, sex, religion, and national origin, at least to some extent, and our policy except with respect to insurance is absolutely uniform. You can predict those things in a lot of ways, but you cannot predict them by assuming that every black is like the average black and every woman is like the average woman, and there is no reason at all for insurance to be any different.

One thing that is kind of ironic about this is that many of the people who are most hostile to affirmative action quotas also support the traditional industry policy of group equality with respect to sex and insurance. And that, Senator, is simply inconsistent.

The CHAIRMAN. Say that again? Those who are most opposed?

Mr. LAYCOCK. Those who are most opposed to affirmative action quotas—this is not uniformly true, but it tends to be the case—those who are most opposed to affirmative action quotas tend also to be opposed to this bill. They tend also to say the insurance industry's group model of equality is the proper model with respect to sex and insurance, that we want individual equality with respect to employment even in the face of evidence that the current success of minorities is limited by past discrimination, but we want group equality with respect to sex and insurance. And the only unifying theme behind those two positions is hostility to the claims of minorities and women.

Those who are opposed to affirmative action and who want to do something to disprove the charge that they are racist and sexist ought to be supporting this bill and taking a consistent, color-blind, sex-blind, individual equality position in all the contexts in which that issue arises.

The CHAIRMAN. Professor, do you think this bill is in conflict with the McCarran-Ferguson philosophy?

Mr. LAYCOCK. This is not an insurance bill, Senator. It is a civil rights bill. It does nothing to State insurance regulation except to say there are four group classifications that are so offensive and so misused in our society we will not allow them to be used anywhere else in the economy, and insurance is not an exception. Subject to that, the industry and the State regulators can pursue actuarial soundness, can use any predictor they want, use lots of predictors or few predictors. They just cannot use these four.

That is a civil rights bill and it is exactly like the same civil rights legislation that has been applied to lots of other State-regulated industries without displacing State regulation in general.

The CHAIRMAN. Professor, is it true that most group policies are gender neutral now?

Mr. LAYCOCK. There were hearings held by the Department of Labor in the mid-1970's that indicated that that is the case.

The CHAIRMAN. Certainly social security is.

Mr. LAYCOCK. Substantially group neutral. There are a few anomalies.

The CHAIRMAN. And under the *Manhart* case, at least as far as pensions and annuities are concerned, it would be illegal for them to be otherwise. Whether that extends to other forms of insurance, we are going to find out pretty soon, I think.

Mr. LAYCOCK. It is illegal, but compliance is not yet very close to full. Many employers have a serious problem in that the insurer that handles their group life insurance and annuity plan is refusing to comply with the statute. I know a number of the universities are quite concerned that they may be stuck with liability because the large insurers are stubbornly litigating the issue over and over even though *Manhart* is quite clear, and exposing the employers to the risk of this continuing back pay liability. So compliance is far from complete there, but the law is clear in the employer-sponsored plan context.

The CHAIRMAN. It is clear that we are moving toward, at least in the group policies, gender neutrality. Is it not also true that the insurance industry 50 years ago was neutral, that sex discrimination is a relatively newer facet to the selling of insurance?

Mr. LAYCOCK. I am not fully familiar with that history, Senator. I know that at least some companies began sex discrimination in the 19th century. Then it was abandoned for a while. The data tend to fluctuate. The correlation between sex and life expectancy has fluctuated very dramatically and was very small 50 years ago. Women tended not to live much longer than men in 1920.

And what you say certainly does not surprise me. The difference has become substantial only in the last few decades. And it would make sense that insurers expanded their use of it in the last few decades.

The CHAIRMAN. What it does mean, if indeed the statement is generally true, is that it is not impossible for the insurance companies to adjust to gender neutrality.

Mr. LAYCOCK. It is plainly not impossible. Many group-sponsored plans all over the country are running fine on a gender-neutral basis.

The CHAIRMAN. Professor, I have no more questions. Again let me thank you for your statement. I read your statement in total last night. It was excellent and it could not have been a better base, and I appreciate it very, very much.

Mr. LAYCOCK. Thank you, Senator.

[The statement follows:]

STATEMENT OF DOUGLAS LAYCOCK

My name is Douglas Laycock. I am Professor of Law at The University of Texas. One of my specialties is discrimination law, and that is how I became interested in the subject matter of this bill. I have engaged in interdisciplinary research on discrimination in insurance with a team of lawyers and demographers. Additional support for many of the statements I will make today may be found in the articles published by our research team.^[1] I have also done research on problems of federalism, remedies, and constitutional law. The chairman has invited me to testify primarily about the fit between the nondiscrimination provisions of this bill and larger civil rights policy. For convenience, I will sometimes refer to the nondiscrimination provisions as "the nondiscrimination in insurance bill." I hope to show that this is a traditional civil rights bill—indeed, a conservative civil rights bill. It would substitute a system of individual equal treatment for a system of sexual quotas aimed at group equality. It is a bill that every senator should be able to support.

I. THE BILL AND THE CONTROVERSY

The bill would ban the use of race, sex, religion, or national origin as bases for denying or limiting insurance coverage or determining the cost of insurance. Most of the bill is relatively uncontroversial, but most of the insurance industry fiercely opposes any restriction on the use of sex to determine insurance rates. Insurers frequently charge women less than men for life and auto insurance, but more than men for health insurance and annuities. These differences are defended on the ground that women have lower age-specific rates of death and auto accidents, and higher rates of illness, than men.

Critics emphasize that these rates are based on group averages that do not even purport to describe individual cases. All women get smaller annuity payments than men, on the theory that women will make up the difference by collecting more payments in the long run, but the fact is that some men and some women die at every age. Women who die young get smaller annuities even though the insurance industry's generalization does not apply to them; long-lived men collect larger monthly payments and collect them for more months. Similarly, careful male drivers pay higher auto insurance rates based on the male average, while careless female drivers benefit from insurers' experience with other women. To the civil rights movement, charging all men more for auto insurance because of average male loss experience is like paying all blacks less because of some average black test score.

This controversy over rates is most easily referred to in terms of the actuarial tables that underlie the rates. Segregated actuarial tables reflect average differences between the sexes by calculating the loss experience of all women separately from the loss experience of all men; the result is separate and unequal insurance rates by sex. Integrated tables pool the data for both sexes and show combined loss experience. When integrated tables are used, the cost of insurance is equal for both sexes.

Civil rights activists who have generally supported affirmative action quotas have also advocated integrated insurance tables; opponents of quotas have generally urged segregated insurance tables. This alignment is anomalous, because the customary segregated insurance table is a form of quota, indistinguishable in principle from an affirmative action quota. To understand what is at stake, it is necessary to place the issue in the context of the two competing theories that have dominated the civil rights debates of the last decade. I will illustrate these theories with examples from employment discrimination law, because the theories are most fully developed in that context.

II. DISPARATE TREATMENT, DISPARATE IMPACT, AND SEGREGATED TABLES

A. *Individuals versus Groups.* Proponents of both integrated and segregated tables claim to offer sexual equality; the disagreement is over whether the unit of analysis should be the individual or the group. Consider an annuity plan with two thousand participants, half male and half female, each of whom made equal contributions to

the plan and retired at the same age. Proponents of segregated tables attempt to assure that the sum of all benefits paid to the thousand men will equal the sum paid to the thousand women—that sexual groups will be treated equally. But the result is sexual inequality for individuals: every man will receive a larger periodic benefit than any woman, and a man and a woman of equal longevity will receive unequal total benefits. Integrated tables take the opposite approach, achieving equality at the individual level while risking an unequal distribution of total benefits to the two groups.

The question, therefore, is whether in this context civil rights policy ought to require equality for individuals or equality for groups. There was a time when that question could be answered unhesitatingly. The main civil rights tradition has analyzed rights in terms of individuals. Its most fundamental principle has been that no individual shall be considered simply as part of a racial, sexual, religious, or ethnic group, or treated differently because of his membership in such a group. Under this disparate-treatment theory, it is plainly wrong to pay a black worker less than a similarly situated white worker, or a female annuitant less than a similarly situated male annuitant.

But the issue has been complicated by the introduction into civil rights law of analyses based on equality for groups. The first such innovation was the disparate-impact theory—that facially neutral employment practices with unequal effects on racial or sexual groups are unlawful if not justified by “business necessity.” The leading disparate-impact case is *Griggs v. Duke Power Co.*,^[3] in which an employer required a high school diploma and a passing test score as conditions of employment for certain positions. Although the requirements did not explicitly differentiate between blacks and whites, they had unequal impact on racial groups, because a smaller percentage of blacks had diplomas and passed the test. The Supreme Court held that such requirements violate Title VII of the Civil Rights Act of 1964, unless the employer can show that its requirement is actually related to job performance.

Subsequent developments moved further towards group theories of equality. *United Steelworkers v. Weber*^[3] authorized “voluntary” quotas to achieve proportionate representation of racial groups in traditionally segregated occupations. Affirmative action rules for government contractors have emphasized proportionate representation in all occupations.^[4] Courts have ordered quotas as “remedies” for past discrimination.^[5] These developments have blurred the traditional emphasis on individuals in civil rights law. But the prohibition of disparate treatment of individuals remains dominant in legal theory, and certainly in the civil rights thought of the Reagan administration.

A choice between group and individual equality is posed when criteria such as race, which cannot be used by an employer, are statistically associated with other criteria in which employers are legitimately interested, such as test scores. When such an association exists, employers intent on pursuing the legitimate criterion inevitably run afoul of either disparate-impact or disparate-treatment theory. If they distinguish on the basis of the forbidden criterion, as a way of predicting the legitimate one, they are guilty of disparate treatment. That is, they cannot refuse to hire blacks on the ground that blacks as a group have lower test scores. If they use the legitimate criterion directly—for example, hiring those with the highest test scores—they will cause disparate impact, because of the association between that criterion and the forbidden one. In such cases, employers must show a business necessity for using the legitimate criterion.

Which theory applies in the event of litigation thus depends on how an employer formulates his requirement. The classic illustrations are cases in which employers refused to hire women for certain jobs because employees in those jobs had to lift heavy weights.^[6] The exclusion of women was disparate treatment, and illegal. The fact that many women were unable to lift the weights was irrelevant to the case of a woman who could; sex could not be used to predict her weight-lifting ability. However, the employers were permitted to require applicants for these jobs to pass a weight-lifting test. This policy would have disparate impact on women, but the company could justify it by showing business necessity—in this case, that lifting the weights was necessary to operation of the business.

Note that in the disparate-impact case, individuals of equal weight-lifting ability were treated alike, regardless of their sex; in the disparate-treatment case, individuals of equal weight-lifting ability but different sex were treated differently. In short, the test of disparate treatment is whether any difference in treatment remains after controlling for all variables other than sex.

The associations between sex and mortality, sex and morbidity, and sex and auto accidents, are no different from any other association between forbidden and legitimate criteria. American women as a group currently live longer than American

men as a group, just as they are able to lift less weight as a group. But some women will die earlier than some men, just as some will be able to lift more weight. An employer who pays annuities on the basis of integrated tables in effect distinguishes among his employees on the permissible basis of longevity, for those individuals who live the longest will collect the most periodic payments and thus the largest total sum. Of course, the employer's practice may have disparate impact on men, for as a group they may not live to collect as many periodic payments as women. But if he tries to avoid this disparate impact by using segregated tables—making larger periodic payments to all men—he distinguishes on the basis of sex. This would be disparate treatment, for individual men and women of equal longevity would be treated differently: Both periodic benefits and total benefits will be greater for a man than for a woman of equal longevity.

On the basis of this analysis, the Supreme Court has held that segregated tables in employer-sponsored insurance plans violate Title VII. [7] The nondiscrimination in insurance bill would subject other insurance plans to the same rules.

B. *The Expectancy Argument.* One common response to this analysis is to argue that one should not compare actual cash benefits received, either periodic or total, but rather, the expected values of the annuities as of the date of retirement. [8] Because women as a group live longer than men as a group, the argument runs, each woman has a greater life expectancy than each man. It would follow that under a properly constructed segregated annuity table that provides larger periodic benefits to men, the expected value of future payments would be identical. Actual payments would be irrelevant, for their expectations would be identical at the beginning.

This expectancy argument begs the questions in a fundamental way. The ultimate issue is precisely whether mortality data should be classified by sex for the purpose of paying annuities—that is, whether sex may be used to predict longevity. No expectancy can be calculated until that question has been answered. The statement that some particular person is expected to live some certain number of years is dependent on a prior decision about how to classify that person. It is circular to use the expectancies generated by a predictor to justify using that predictor. This may be illustrated by a simple example.

Consider the life expectancy of a newborn black male in South Carolina. Prediction of his life expectancy may or may not take into account his sex, race, and residence. If he is classified as a nonwhite male South Carolinian, his life expectancy is 58.33 years. [9] If he is classified simply as a resident of the United States, his life expectancy is 70.75 years. [10] The other possibilities range in between; he may be a nonwhite South Carolinian, a male South Carolinian, a nonwhite male American, a male American, a nonwhite American, or a South Carolinian. He has eight different life expectancies—and just on the basis of the three predictors introduced so far. The number of expectancies increases exponentially as we add more predictors, such as urban or rural residence, socioeconomic status, and family medical history.

No one of these expectancies is any more statistically valid than the others. Our hypothetical infant is a member of all eight groups; all eight expectancies are his expectancies. A newborn black female in South Carolina has a greater life expectancy only if one has already decided to use sex as a predictor; if sex is not used, the two infants have identical expectancies. Thus, an "equal expected value" test is futile: it can be satisfied by either integrated or segregated tables.

Even so, one might intuitively consider a prediction "truer" if it takes more information into account. If this is the criterion, our hypothetical infant must be treated as a black male South Carolinian—and, the prediction must be made more detailed if possible. But no insurance company would so classify him; he would be treated as a male American, or just an American. Adding more predictors does not necessarily make the prediction more accurate; relying on an unstable or spurious association may make the prediction less accurate. This supposed criterion of "maximum predictive power" is also frequently overridden because the expectancies generated may be too expensive to apply or socially unacceptable. For example, social unacceptability and resulting legislation caused the insurance industry to abandon racial rate categories many years ago. The important point is that no "true" expectancy can be generated by purely mathematical methods; [11] considerations of social policy and administrative convenience are always called into play.

The relationship between data classification and expectancy is obscured by talking in terms of the "average man" and the "average woman," for that language presupposes that data will be classified by sex. The terminology does, however, highlight what insurers are doing when they classify data by sex: they are treating every woman as though she were at the mean of the distribution for women, and every man as though he were at the mean of the distribution for men. "Individual" expected values are merely applications of group averages to individuals. That is

quintessential disparate treatment, exactly analogous to hiring men because of their greater weight-lifting ability or whites because of their higher average test scores. The claim that segregated tables equalize the expected value of benefits to be paid is simply a reformulation of the claim that segregated tables provide equal benefits to the two sexes considered as groups.

C. *Segregated Tables as Quotas.* By now it should be clear why segregated insurance rates are a form of quota. A racial hiring quota attempts to assure that blacks as a group get their proportionate share of jobs. To the proponents of such quotas, it matters not whether their earlier failure to get a proportionate share resulted from discrimination by the employer or from a disproportionate distribution of skills. Even assuming past discrimination, it matters not that the individual beneficiaries of the quota may not have been victims of the discrimination, or that the individual victims of the quota almost certainly were not beneficiaries of the discrimination. All that matters is to distribute the jobs proportionately among racial groups.

Similarly, segregated insurance tables attempt to assure that men as a group get their proportionate share of annuity benefits, that women get their proportionate share of auto insurance payouts, and so on. It is never the case that sexual differences in loss experience result from past discrimination by the insurer. Most such differences result from individual behavior patterns, such as smoking and reckless driving, that differ far more from person to person within each sex than between the sexes. The beneficiaries of the quota include reckless women drivers who get cheap auto insurance because other women are careful, and men who live to be one hundred and collect larger annuity payments because other men die young. The victims include sickly women—even terminally ill women—who get smaller annuities because other women live longer, and careful male drivers whose auto insurance is expensive because other men are careless. In every case, segregated tables distribute benefits and burdens on the basis of sex, at the expense of individual merit or desert, just as employment quotas distribute jobs on the basis of race or sex at the expense of individual merit.

Hiring quotas are offensive because individual applicants must be discriminated against in order to implement them; similarly, segregated tables—insurance rate quotas—are offensive because individual policy holders must be discriminated against in order to implement them. If those who oppose quotas do so out of principled commitment to individual nondiscrimination, then they should support the principle of the nondiscrimination in insurance bill. If they do not, then the civil rights movement may be justified in its inference that opposition to quotas is really opposition to civil rights.

III. THE ARGUMENTS FOR EXEMPTING INSURANCE FROM CIVIL RIGHTS POLICY

A. *The Central Argument.* Proponents of segregated tables have often tried to obscure the foregoing analysis, usually by ignoring the distinction between individual and group equality. Those who understand the distinction argue that it cannot be applied to insurance, that insurers simply must use group classifications. The essence of the argument is that civil rights policy cannot sensibly be applied to insurance, because losses must be predicted in advance, unlike employment qualifications, which can be measured directly before offering employment. Thus, the argument goes, every applicant for employment can be tested individually for reading ability or weight-lifting ability, but no applicant for insurance can be tested to determine how long he will live or how much damage he will do with his automobile. Thus, there is no legitimate reason for using race to predict reading ability or sex to predict weight-lifting ability, but there is a legitimate reason, the insurance industry claims, to use sex to predict losses. [12]

There are multiple flaws in this argument. Most obviously, it proves far more than the insurance industry is willing to defend. If civil rights policy simply does not apply to insurance, then tables could be segregated by race, religion, and ethnicity as well as by sex. Indeed, a few die-hards take exactly that position; they consider it a great mistake to have abandoned racial rate discrimination. [13] But even this tiny group seems to make only an academic argument; no one seriously proposes that the industry begin charging blacks more than similarly situated whites for life, health, auto, and property insurance.

Defenders of sex-segregated tables are driven to awkward expedients in explaining why race-segregated tables are different. It has been suggested that racial differences are so much smaller or less stable than sexual differences that the two cases are not comparable, and even that it is too difficult for insurers to figure out who is black and who is white. [14] None of these distinctions is supported by the data, and none of them is the real reason why race-segregated tables have been abandoned.

The real reason is consensus that race-segregated tables would be morally offensive. That consensus is based on the perception that civil rights policy does indeed apply to insurance, and that treating every black as though he were the average black is discrimination. It is equally discriminatory, even for an insurer, to treat every woman as though she were the average woman.

The second obvious defect in the argument for exempting insurance from civil rights policy is that its conclusion is a non sequitur. The argument concludes: "Insurers must predict losses; therefore, they must use sex as a predictor." But of course there are many other ways to predict losses. As we have seen, an insured's expected loss is based on the average loss experience of some group of which he is a member, and he is a member of many groups. Losses can be predicted by considering all humans as a single group, or by using a wide variety of unforbidden criteria to classify the loss data. Thus, weight, build, physical condition, personal and family history, occupation, habits, aviation, military service, residence, hobbies, smoking, and exercise patterns have all been used to predict mortality in the sale of individual life insurance. [15] Life expectancy also varies widely by marital status, socioeconomic status, and state of residence—in each case, more widely than it varies by sex. [16] Similarly, automobile insureds can be grouped by factors such as past traffic offenses, past accidents, past claims, kind of automobile driven, how often the car is used, driving experience, education, and age. Some of these predictors have their own problems, but there are many such predictors to choose from. It is simply not true that losses cannot be predicted without classifying data by sex.

Sex does have one advantage over some of the alternate predictors. It is very easy to determine a person's sex, and it almost never changes thereafter, so it is somewhat less expensive to classify insureds by sex than to use other predictors. The same thing is true of race and ethnicity; convenience has always been one of the attractions of discriminating on the basis of ascriptive characteristics. But civil rights policy has never allowed expense as a justification for disparate treatment. It is more expensive to identify poor readers and weight lifters than to identify blacks and women, but not even apologists for the insurance industry argue that employers should be allowed to hire only white males to save the expense of testing. This is not a trivial point; some economists suggest that avoiding the expense of individual testing is the motive for most disparate treatment today, [17] but that motive does not legitimate disparate treatment on the basis of race or sex.

In any event, the expense argument is of limited significance to the nondiscrimination in insurance bill. The expense argument is most significant with respect to group insurance, where some insurers classify only by sex, or sex and age, and ignore all other predictors entirely. But group insurance is most often employer sponsored, and thus subject to Title VII; sex is already forbidden in those plans. The pending bill would extend this rule to insurance not sponsored by employers; these are mainly individual policies. And in individual policies, insurers commonly make much more individualized predictions, with a larger number of predictors. Thus, the expense of using these predictors is already being incurred; any further expense from abandoning sex discrimination would be quite marginal. It would also be unnecessary for group plans not already covered by Title VII to add more expensive predictors. These plans could classify by age alone, or not classify at all, as most employer-sponsored plans did even before Title VII. [18]

There is a third error in the argument for exempting insurance from civil rights policy. That is in the original assertion that job qualifications are directly measurable in a way that insurance risks are not. The point sounds plausible with respect to test scores and weight lifting ability. But many job skills cannot be measured directly or predicted reliably, especially for new entrants to the labor force. Indeed, much of the work of industrial psychology is devoted to predicting and evaluating job qualifications, and for complex jobs the problems of evaluating even incumbents are enormously difficult. No hiring officer can consistently predict absenteeism, turnover, persistence, reliability, creative genius, courage, or judgment with much accuracy in individual cases, and employers may frequently be able to adduce some evidence that these traits have statistical associations with sex or race. An exception to civil rights policy for predictions of the future would have many applications outside employment and insurance. Parole boards, lenders, and universities could use race, sex, religion, and national origin to predict recidivism, default, and academic failure immeasurable traits or future events would gut civil rights policy.

Thus, courts have refused to allow the use of sex to predict immeasurable intangibles. In *Diaz v. Pan American World Airways, Inc.*, [19] for example, the court found that sex was the best single predictor of ability to satisfy passengers' emotional needs on airplane flights, and that there was no way to measure this ability directly. Despite these somewhat implausible findings of fact, Pan Am's policy of

hiring only women was held to be illegal disparate treatment. That is, Title VII forbids the use of sex as a predictor even when the court believes it to be the best predictor. No qualified man can be rejected because of sex alone, no matter how few men are qualified or how hard it is to identify them. There is no better reason to use sex as a predictor in insurance than employment.

There is a variation of the argument that segregated insurance tables are a necessity. The argument is that if sex differences are ignored, one sex will subsidize the other, the subsidizing sex will quit buying insurance, and insurance pools will be destabilized. [20] If that were true, we would have encountered the same problems with respect to all the other groups for which the insurance industry does not compute separate actuarial tables. No company still has separate tables by race. Whites live longer than blacks, [21] and thus, by the industry's logic, whites subsidize blacks in life insurance. But whites have not quit buying life insurance. Rich people live longer than poor people, [22] but rich people still buy life insurance. The difference in life expectancy between highly and poorly educated women is greater than the difference between the sexes, [23] but educated women still buy life insurance. The difference in life expectancy between married and single men is greater than the difference between the sexes, [24] but married men still buy life insurance. Hawaiians live more than ten years longer on average than residents of the District of Columbia, a difference greater than any sex difference anywhere in the world. [25] I know of no nationwide company that has different life insurance rates for Hawaiians, but Hawaiians still buy life insurance.

Differences in group averages of this magnitude do not cause many members of the lower risk group to go uninsured, and no unmanageable problems result. Indeed, the Department of Labor found in 1974 that most employer-sponsored insurance plans do not distinguish on the basis of sex. [26] For young people, sex differences in auto insurance are somewhat greater than in life insurance, but it is not clear that the differences would be great enough to destabilize insurance pools even if no other predictors were used. Any destabilizing effect can be greatly reduced by pricing insurance on the basis of actual driving records.

B. The Slippery Slope Argument. Some defenders of segregated tables take a different position, which can only be described as a slippery slope argument. Conceding that sex discrimination is not essential to insurance, these defenders argue that a ban on sex discrimination is just the beginning of a general attack on all rating classifications. [27] The fear is that the same demands for individual treatment that justify prohibiting sexual rate categories could also be made with respect to many other rate categories.

The slippery slope argument is not a plausible criticism of the nondiscrimination in insurance bill, because it is carefully limited to the core factors that have been included in every modern civil rights act: race, color, sex, religion and national origin. But it is true that many groups have tried to bring themselves within the ambit of civil rights policy by analogy to these original five criteria. Congress has sometimes responded with nondiscrimination legislation, as in the Age Discrimination in Employment Act and the Rehabilitation Act, which protect workers age forty to seventy and the handicapped. This legislation has not always been carefully thought through, and borrows the language of Title VII in part, but none of it goes as far as Title VII; Congress has always understood that discrimination on the basis of these characteristics is more likely to be justified, and less morally offensive, than discrimination on the basis of race, color, sex, religion or national origin. For example, age was excluded from Title VII for fear that group insurance plans would be disrupted, [28] and insurance was expressly excluded from the Age Discrimination in Employment Act. [29]

The intuitive Congressional judgment has been sound. It is possible to specify the characteristics of race, color, sex, religion and national origin that make discrimination on these bases so peculiarly offensive. [30] First, they are immutable, at least as any cost society is willing to coerce. People do change their religion on occasion, but they have a constitutional right not to do so; it is no answer to tell people they may escape discrimination by undergoing a forced conversion.

Second, these characteristics are always irrelevant to any consideration of merit or desert. By irrelevant, I mean that they are never of legitimate interest for their own sake. At most they are statistically associated with some other characteristic that is relevant—say knowledge of nuclear physics, or longevity. It is easy to tell which characteristic actually matters by considering two persons identical except for sex and two others identical except for knowledge of nuclear physics. There is no basis to distinguish the two who differ only by sex, but if one is hiring nuclear physicists, there is strong reason to distinguish the two who differ by knowledge of

nuclear physics. Similarly, insurers are really interested in mortality, morbidity, or automobile accidents; sex itself is irrelevant to their concerns.

It is the immutability of race, color, sex, religion, and national origin that justifies the ban on their use as predictors. If the government accepts or requires a degree in nuclear physics as evidence of knowledge in the field, those few persons who learned nuclear physics outside a degree program can earn the degree if they care enough. Because the predictor characteristic is mutable, individuals can accommodate themselves to it. But if the government licenses only male nuclear physicists, no woman can ever earn a license, no matter how great her abilities or effort. Similarly, with segregated actuarial tables, no woman can ever get the male rate for health insurance, no matter how well she cares for herself, how healthy she is, or how few claims she has filed in the past. Sex is therefore an unacceptable predictor, no matter how few female nuclear physicists there are. If anything, sex is even less acceptable as a predictor in insurance, because there are many healthy women, many short-lived women, and many careful male drivers. More generally, statistical associations are not enough to justify the use of immutable predictors; such predictors can be used only when they are relevant in distinguishing otherwise identical individuals.

Third, race, color, sex, religion, and national origin classifications have been widely misused throughout history. The historic abuse of race, religion, and national origin includes slavery, domination of one group by the other, physical violence, apparently ineradicable hostility, discrimination (civil, political, and economic), stereotyping, and frequent use of these characteristics as predictors despite their inappropriateness under the immutability and irrelevance criteria.

The pattern of historic abuse with respect to sex is a bit different. Organized group conflict and hostility between the sexes has not been nearly as intense or violent as that between racial, ethnic, and religious groups, and there obviously has been a high incidence of close and friendly relations between men and women. But all the other elements of historic abuse have appeared: domination; physical violence; civil, political, and economic discrimination; stereotyping; and frequent use of sex as a predictor or classifier. Those inclined to doubt the frequency of physical violence between the sexes should consider this estimate by trainers at the New York City Police Academy: 40 percent of all calls to police involve disputes between husbands and wives. [31] And much of the friendliness between the sexes has been conditional on acceptance of male domination. Sex is virtually as suspect as race, and Congress and the state legislatures have properly included both at the core of civil rights policy.

Historic abuse distinguishes race, color, sex, religion, and national origin from a characteristic like high blood pressure. High blood pressure is largely immutable and is sometimes used as a predictor of consequences with which it is only statistically associated. For example, health insurers might refuse coverage, or charge a higher rate, to persons with high blood pressure, even though some might have few medical expenses. But because there is no long history of conflict or domination between blood pressure groups, surcharging insureds with high blood pressure is far less suspect than surcharging black insureds or female insureds. Surcharging those with high blood pressure is less likely to have been motivated by hostility, less likely to add to the cumulative disadvantage and frustration of a group already victimized in many other ways, and less likely to revive or intensify old prejudices.

There can be degrees of immutability, irrelevance, and historic abuse. But no other possible predictor so fully shares all three of these characteristics as race, color, sex, religion, and national origin. There are sound reasons why these five criteria are at the very core of civil rights policy. In employment, they simply cannot be used as predictors, even for insurance purposes. That rule can be extended to all insurance without jeopardizing the principle of rate classifications, because race, color, sex, religion, and national origin are peculiarly offensive classifications.

C. The Genetic Difference Argument. A final argument sometimes offered to justify segregated annuity and life insurance tables is that sex differences are genetic. [32] It is usually offered to distinguish sex-segregated tables from race-segregated tables. The argument has obviously had a certain emotional appeal, but it is both untrue and irrelevant, and more recent defenses of segregated tables de-emphasize it. [33]

Sex differences in mortality have been extensively investigated by biologists and demographers. The causes of such differences are complex and not yet fully understood, but most major investigators now believe that social, cultural, environmental, and behavioral factors are more important than genetic or biological factors. [34] The plainest evidence for environmental explanations of sex mortality differences is their great variability over time and space. In much of the third world, including

countries with nearly a quarter of the world's population, men live as long or longer than women. [35] In the developed countries, women now tend to live longer than men, but the differences are not uniform. The difference is less than four years in Hawaii but nine years in Wyoming, [36] five years in East Germany but ten years in the Soviet Union. [37]

Sex mortality differences of this magnitude are a phenomenon of the last generation. So far as we know, they are unprecedented in all of human history. In 1920, women in the United States lived an average of only one year longer than men. [38] Today, that average has increased to more than seven years. [39] Such a sudden change requires investigation. It almost certainly is not genetic, for evolutionally changes do not occur so fast.

The most important cause of current sex mortality differences is self-destructive behavior among men, which is why American adult men have a lower life expectancy than men in several less developed countries. [40] Smoking alone accounts for three-fourths of the increase in sex mortality differences between 1910 and 1962. [41] Alcohol, recklessness, and the coronary-prone personality also contribute. [42] Women who engage in such behavior shorten their lives just as men do. [43] It is both unfair and erroneous to treat all men as if they engage in such behavior, and all women as if they do not.

There is another important implication of the dramatic changes in sex mortality differences. Because the relationship between sex and mortality is so changeable, sex is not a good predictor. In 1920, men and women bought life insurance on the basis of tables predicting that women would live one year longer than the men. [44] Some of those men and women are still alive today, when, on average, the women are living seven years longer than the men. The prediction was worthless. Today's young people are buying insurance on the basis of the present seven-year difference. But the sex mortality difference for their generation will not be known until the middle of the next century, when most of them will have died. By then, the relationship between sex and mortality might have changed again, perhaps as dramatically as in the last generation.

Indeed, there are already signs of a possible decline in sex mortality differences. Nationwide, the female advantage quit increasing about 1970 and has fluctuated narrowly since. [45] In Hawaii, it has declined sharply; [46] it has also begun to decline in some European countries. [47] Male death rates are declining more rapidly than female death rates, [48] and the effects of this should begin showing up in life tables soon. The very recent improvements for males is greatest among those ages and causes of death that have contributed most to sex mortality differences—ages over fifty and deaths from cardiovascular disease. [49] No one can predict how long these trends will continue, but there is an excellent change that sex mortality differences will decline sharply in the next generation. Sex roles are changing; men and women are behaving more similarly. One illustration is smoking. We are now paying the cost of its having become socially acceptable for women to smoke; lung cancer rates are approaching equality. [50] We do not know that the future will bring, but we do know that the relationship between sex and mortality is volatile, and that there is not reason to believe the current seven-year female advantage will endure.

Segregated tables in health and auto insurance have not commonly been defended on the ground that they reflect genetic differences between the sexes. Less is known about these differences, but it is quite unlikely that they can be adequately explained by genetics. Many studies of the relationships between sex and illness, disability, and use of medical care suggest social and behavioral explanations. [51] There is some evidence that male aggressiveness and reckless driving are related to male sex hormones, but socialization also seems to play an important role. [52]

Even if some of the sex differences relevant to insurance are genetic, that would not justify sex-segregated actuarial tables. Whatever their cause, these differences at most establish a tendency, and a rather weak tendency at that. Millions of individuals do not fit the insurance industry's sex stereotypes. We all know men who lived to be a hundred and women who died young; men who are sickly and women who never miss a day's work; men who are careful drivers and women who are not. These people are entitled to be treated as individuals, regardless of whether a contrary group tendency among their sex is social, biological, or both.

Indeed, no one has ever offered a plausible reason why the cause of sex differences matters to this issue. It has been suggested that if sex mortality differences are genetic, sex itself is actually a predictor of mortality and not just a surrogate for the true factors, and that sex can therefore be used as a predictor under such circumstances without indulging a sexual stereotype. [53] But this is demonstrably not true.

One known genetic difference between the sexes, related to mortality, is that males are far more likely than females to be hemophiliacs. But only a few males are at risk, only some of those actually have the disease, and these individuals can be identified. Thus, sex is not the "true factor" in shortened life from hemophilia, and to treat all males as hemophiliacs would be a "sexual stereotype," even though hemophilia is a sex-linked trait. To claim that sex itself is a predictor of mortality, and not merely a surrogate, proponents of segregated tables must explore each genetic difference and show that it affects all members of a sex and is not merely associated with sex. Even if some genetic factors were shown to affect every member of a sex, it would do so only marginally; sex still would not predict longevity for individuals, and would still predict weakly for groups.

IV. TRANSITIONAL ISSUES

Legislation requiring sex-integrated insurance tables faces two important transitional issues. The first is whether new nondiscriminatory insurance rates are to be set at the level now charged the better treated sex, or at some intermediate level. The second is whether nondiscriminatory rates must be implemented immediately, phased in gradually, or implemented all at once but only after a delay. The pending bill resolves both issues in a way most favorable to insureds. This is, it requires that with respect to each kind of insurance, the sex now discriminated against immediately be treated as well as the sex now advantaged. The result is to create substantial unfunded liabilities, particularly in annuities and apparently in life insurance as well. This provision of the bill has been legitimately criticized by the insurance industry.

However, the insurance industry's approach to transitional issues is also unacceptable. It argues that no non-discrimination legislation should be applied to existing policies—in effect, that present insureds have a vested right to the fruits of discrimination. In the case of life insurance and annuities, this approach would delay full implementation of the bill until well into the next century.

Unlike the basic principle of integrated tables, these issues are the sort that can be compromised. If the conservatives are serious about their commitment to civil rights, they will not use the transition provisions as a pretext to oppose the bill; they will propose a better transition. If the liberals are serious about showing a new sensitivity to cost without abandoning their commitment to reform, they will not jeopardize the bill by insisting on the present transition provisions; they too will propose a better transition.

Both the insurance industry and the supporters of the pending bill seek to protect the reliance interests of persons presently insured. This is a legitimate goal, but in searching for compromise, it is important to distinguish those aspects of policies on which insureds have genuinely relied from those on which reliance is only theoretical. Only when a specific dollar amount of premiums or benefits is contractually guaranteed is it plausible to believe that insureds have actually relied on it.

Thus, in whole life insurance, the premium and the face amount of the policy are fixed, and insureds are very much aware of those two numbers. Reliance may be assumed. On the other hand, dividends on participating policies are not fixed; they are set in light of experience and at the discretion of the company. No insured can plausibly claim to have relied on a particular level of dividends; at most, a woman can say that she expected to benefit from continued discrimination. That is not a claim of reliance that Congress need honor. Similarly in annuities, the contractually guaranteed future payment is often set very conservatively, with the actual benefits to be determined in light of experience. In that situation, no insured can claim to have relied on any particular level of future benefits, and there can be no legitimate objection if future benefits are set in a nondiscriminatory way at a level lower than the segregated male level but higher than the segregated female level.

This more realistic approach to reliance interests reduces the transition problem but does not eliminate it. The remaining problems arise because the insurance industry promised one sex unfairly high benefits and the other sex unfairly low benefits. The gap between the two levels of benefits becomes a transitional cost, which must be paid either by the advantaged sex (by forgoing what it was promised), the disadvantaged sex (by forgoing any remedy on existing policies), or the insurance industry and future insureds (by raising all benefits to the level promised the advantaged sex). It is classically the sort of problem that can be compromised by having all three possible cost bearers contribute part of the cost.

It is important to understand that these cost problems are purely transitional. They will not arise with respect to policies issued after the bill is enacted, because these policies will make the same promises to both sexes. The cost of any level of

benefits will be somewhere between the present male and female rates. The bill will not increase the average cost of insurance at all, but it will redistribute the cost by eliminating the present sex discrimination.

V. FEDERALISM AND STATE REGULATION OF INSURANCE

I also wish to say a word about the federalism aspects of this bill. The Supreme Court has held that insurance is commerce, so there is no doubt of Congressional power. [54] There is, however, a tradition of leaving insurance regulation to the states. This bill is consistent with that tradition. It is not primarily an insurance bill; it is a civil rights bill.

The nation has decided that race, sex, religion, and national origin should not be factors in the economic affairs of our citizens. In industries or activities in which discrimination has been especially widespread, egregious, or offensive, Congress has acted to prohibit it with federal legislation. For example, Congress has banned discrimination in public accommodations, in education, in employment, and in housing, and discrimination by government contractors. It has forbidden racial discrimination in all private contracts. These bans on discrimination have not displaced state regulation of industries traditionally subject to state control. The public accommodations title of the 1964 Civil Rights Act has not led to a general displacement of state regulation of hotels and restaurants; the Fair Housing Act has not led to a general displacement of state real property law; the 1871 Civil Rights Act has not displaced state commercial law.

This bill would affect the insurance industry in the same limited way. The insurance industry is probably the most important exception to the general federal policy against discrimination. It is a huge industry that affects every American, and it is an open, flagrant, discriminator. This bill would prevent the industry from discriminating and would interfere in no other way. Insurers and state insurance commissions would remain free to set rates on the basis of any factor other than race, sex, religion, or national origin; to compile sound actuarial tables on the basis of any factor other than these four; to assure a fair profit to the companies and adequate reserves for the policy holders. All this the industry and the states could do in their own way without federal interference, subject only to the same non-discrimination rules imposed on the rest of the economy. This bill is not a step towards federalizing insurance regulation; it is a simple application of the long established federal policy against discrimination. The labor laws, the securities laws, and the antitrust laws have been applied to insurance without federalizing insurance regulation; [55] the civil rights laws should applied as well.

This bill would also cure a troublesome anomaly in the existing regulatory scheme. Employer-sponsored insurance is already subject to federal civil rights legislation; other insurance is not. The insurance companies are subject to state rules, but their employer customers are subject to federal rules. [56] Some employers are having difficulty complying with existing federal law because their insurers refuse to cooperate. Employers or employee groups determined to discriminate can avoid existing federal law by abandoning the employer-sponsored plan and letting each employee buy his own insurance in the open market. I do not believe that many employers will take that option, but as long as it exists it provides a loophole for diehard discriminators and a talking point for opponents of the employment title of the 1964 Civil Rights Act. All insurance should be subject to a single rule, and that rule should be based on the general federal policy that no individual may be treated differently because of race, sex, religion, or national origin.

VI. CONCLUSION

The nondiscrimination in insurance bill is squarely in the accepted mainstream of the American civil rights tradition. It would provide equal opportunity for every individual, and end a system of sexual quotas in insurance. The sex differences in loss experience offered to justify existing discrimination are mere statistical associations; they are no justification for discriminating against individuals who do not fit the sexual stereotype. With appropriate amendments to the transitional provisions, the bill is one that both liberals and conservatives should be able to support.

FOOTNOTES

1. Brilmayer, Hekeler, Laycock & Sullivan, "Sex Discrimination in Employer-Sponsored Insurance Plans: A Legal and Demographic Analysis," 47 U. Chi. L. Rev. 505 (1980); Laycock and Sullivan, "Sex Discrimination as Actuarial Equality: A Rejoinder to Kimball," 1981 Am. B. Found. Research J. 221.

2. 401 U.S. 424 (1971).
3. 443 U.S. 193 (1979).
4. 41 C.F.R. Part 60.
5. E.g., *Rios v. Enterprise Ass'n of Steamfitters, Local 638*, 501 F.2d 622 (2d Cir. 1974).
6. E.g., *Bowe v. Colgate-Palmolive Co.*, 416 F.2d 711 (7th Cir. 1969).
7. *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978).
8. Kimball, "Reverse Sex Discrimination: Manhart," 1979 Am. B. Found. Research J. 83, 101-02.
9. Greville, "Some Trends and Comparisons of United States Life-Table Data: 1900-1971," in 1 National Center for Health Statistics, Dep't of Health, Educ. & Welfare, U.S. Decennial Life Tables for 1969-71, No. 4 Table 4, at 4-10 (1975).
10. Id.
11. A. Ayer, *Probability and Evidence* 52 (1972).
12. Kimball, *supra* note 8, at 118-20.
13. Benston, "The Economics of Gender Discrimination in Employee Fringe Benefits: Manhart Revisited," 49 U. Chi. L. Rev. 489 (1982); Bailey, Hutchison & Narber, "The Regulatory Challenge in Life Insurance Classification," 25 Drake L. Rev. Ins. L. Ann. 779, 793 n. 54 (1976).
14. Kimball, *supra* note 8, at 111-13; Kimball, "Reprise on Manhart," 1980 Am. B. Found. Research J. 915, 919.
15. S. Huebner & K. Black, *Life Insurance* 364-68 (9th ed. 1976); Kimball, *supra* note 8, at 119 n. 96; Yenkel, "Exercising to Ensure Health Can Save on Life Insurance," *Chicago Sun-Times*, Sept. 4, 1979, at 41, col. 1.
16. See notes 22-25, *infra*.
17. E.g. Phelps, "The Statistical Theory of Racism and Sexism," 62 Am. Econ. Rev. 659 (1972).
18. 43 Fed. Reg. 38,029, 38,030 (1978) (reporting findings of hearings held by Dept. of Labor in 1974).
19. 442 F.2d 385 (5th Cir. 1971).
20. Bentson, *supra* note 13, at 532-41; Kimball, *supra* note 8, at 106-08, 134-35.
21. U.S. Dept. of Health, Educ. & Welfare, Public Health Serv., Nat'l Center for Health Statistics, *Vital Statistics of the United States 1977*, vol. 2, § 5: Life Tables at pp. 5-9 to 5-11, Table 5-1 (1980).
22. E. Kitagawa & P. Hauser, *Differential Mortality in the United States* 34-36 (1973); Logan, "Social Class Variations in Mortality," in *Demographic Analysis* 138 (J. Spengler & O. Duncan eds. 1956); Martin, "A Comparison of Trends of Male and Female Mortality," 114 J. Royal Statistical Soc'y (Series A) 287, 297-98 (1951); Pressat, "Surmortalité Biologique et Surmortalité Sociale," 14 *Revue Française de Sociologie* (Numero Special 103) 108-09 (1973).
23. E. Kitagawa & P. Hauser, *supra* note 22, at 16-17, 203-04.
24. R. Retherford, *The Changing Sex Differential in Mortality* 91-93 (1975).
25. Greville, *supra* note 9, at 4-14.
26. 43 Fed. Reg. 38,029, 38,030 (1978).
27. This position was taken in a letter to me from a Vice President and Actuary for a major insurer.
28. 110 Cong. Res. 13,490-92 (1964).
29. 29 U.S.C. § 623(f)(2)(1976).
30. The following analysis is developed in Brilmayer, Hekeler, Laycock & Sullivan, *supra* note 1, at 526-33, and is extended in Laycock, "Taking Constitutions Seriously: A Theory of Judicial Review," 59 Tex. L. Rev. 343, 382-91 (1981).
31. *New York Law Journal*, Apr. 29, 1976, at 1, col. 1.
32. Kimball, *supra* note 8, at 111-13; American Academy of Actuaries, Report on Task Force on Risk Classification (1977), reprinted in U.S. Comm'n on Civil Rights, *Discrimination Against Minorities and Women in Pensions and Health, Life, and Disability Insurance* 577, 590-91 (1978); Randall, "Risk Classification and Actuarial Tables as They Affect Insurance Pricing for Women and Minorities," in U.S. Comm'n on Civil Rights, *supra*, at 527, 535-37.
33. Benston, *supra* note 13, at 524; "Privacy, Efficiency, and the Equality of men and Women: A Revisionist View of Sex Discrimination in Employment," 1981 Am. B. Found. Research J. 585, 626 n.145; Kimball, *supra* note 14, at 918-20.
34. S. Preston, *Male Mortality and Cigarette Smoking* 100 (Univ. of Cal. Population Monograph No. 7, 1970); R. Retherford, *supra* note 24, at 101; Enterline, "Causes of Death Responsible for Recent Increases in Sex Mortality Differentials in the United States," 39 *Milbank Memorial Fund Q.* 312, 325 (1961); Pressat, *supra* note 22, at 105; Waldron, "Why Do Women Live Longer Than Men?," 10 *Soc. Sci. & Med.* 349, 349 (1976).

35. The examples are collected in Brilmayer, Hekeler, Laycock & Sullivan, *supra* note 1, at 546-47.
36. Gardner & Schmitt, "Ninety-Seven Years of Mortality in Hawaii," 32 *Hawaii Med. J.* 297, 298-300 (1978); Greville, *supra* note 9, at 4-14.
37. Dep't of Int'l Econ. & Soc. Affairs, U.N. Demographic Yearbook 1977, Table 22, at 442-63, U.N. Doc. ST/ESA/STAT/SER. R/6 (1978).
38. U.S. Bureau of the Census, Statistical Abstract of the United States, 1979, at 70 (100th ed. 1980).
39. *Id.*
40. The examples are collected in Brilmayer, Hekeler, Laycock & Sullivan, *supra* note 1, at 552.
41. R. Retherford, *supra* note 24, at 76-79; S. Preston, Analysis of a Change in Western Mortality Patterns 64, 137 (Ph.D. dissertation, Princeton Univ., 1968).
42. Waldron, *supra* note 34, at 350.
43. As to coronary-prone personality, see *id.* at 351.
44. Statistical Abstract, *supra* note 38, at 70.
46. Gardner & Schmitt, *supra* note 36, at 298-300.
47. The examples are collected in Brilmayer, Hekeler, Laycock & Sullivan, *supra* note 1, at 555.
48. Statistical Abstract, *supra* note 38, at 72.
49. *Id.* at 78.
50. Lewis & Lewis, "The Potential Impact of Sexual Equality on Health," 297 *New England J. Med.* 863, 867 (1977).
51. E.g., Gove & Hughes, "Possible Causes of the Apparent Sex Differences in Physical Health: An Empirical Investigation," 44 *Am. Soc. Rev.* 126 (1979).
52. E. Macoby & C. Jacklin, *The Psychology of Sex Differences* 242-47, 274, 372 (1974); Waldron, *supra* note 34, at 358.
53. Halperin & Gross, "Sex Discrimination in Pensions: Are We Moving Towards Unisex Tables?" in *Proceedings of New York Univ. 30th Ann. Nat'l Conf. on Labor* 235, 249 (R. Adelman ed. 1977); Kimball, *supra* note 8, at 112. Professor Kimball subsequently abandoned this position. Kimball, *supra* note 14, at 918-20.
54. *United States v. South-Eastern Underwriters Ass'n*, 322 U.S. 533 (1944).
55. *Blue Shield v. McCready*, 50 U.S.L.W. 4723 (U.S. June 22, 1982) (antitrust); *Group Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205 (1979) (antitrust); *SEC v. National Sec., Inc.*, 393 U.S. 453 (1969) (securities); 15 U.S.C. § 1015 (1976) (labor).
56. See *Spirit v. Teachers Ins. & Annuity Ass'n*, 475 F. Supp. 1298, 1301-04, 1315-16 (S.D.N.Y. 1979), appeal pending.

[The following information was subsequently received for the record:]

THE UNIVERSITY OF TEXAS AT AUSTIN,
SCHOOL OF LAW,
Austin, Tex., July 20, 1982.

Ms. CINDY DOUGLASS,
Majority Staff, Committee on Commerce, Science, and Transportations, U.S. Senate,
Washington, D.C.

DEAR Ms. DOUGLASS: I assumed that the record of the July 15 hearings would be held open. Accordingly, I enclose a brief extension of my testimony, addressing two points raised after I had testified. Please see that it is included in the record.

Enclosure.

Very truly yours,

DOUGLAS LAYCOCK,
Professor of Law.

Enclosure.

My comparison of sex-segregated actuarial tables to affirmative action quotas led the Chairman to ask subsequent supporters of the bill whether they also supported affirmative action quotas. They said they did, arguing that affirmative action quotas are necessary to overcome the effects of centuries of past discrimination.

I am not persuaded by that rationale, and I have said so in print.¹ I believed our national policy should be uniformly sex and color blind. But the important point is

¹ Laycock, *Taking Constitutions Seriously: A Theory of Judicial Review*, 59 *Tex. L. Rev.* 343, 346, 377-82 (1981).

that the remedial justification for affirmative action is utterly inapplicable to segregated actuarial tables. Thus, those who answered the Chairman's question could consistently say that they believe in individual nondiscrimination, but that that belief was outweighed by the need to remedy past discrimination.

Those who oppose affirmative action quotas and fail to support this bill are being inconsistent. There is no rationale remotely comparable to remedying past discrimination to explain why they support individual equality in the affirmative action context and group equality in the insurance context. What unifies their position is hostility, or at least insensitivity, to women's right to equality. Thus, those of us who oppose quotas must vigorously support this bill, or we will be justly subject to the charges of racism and sexism often aimed at us.

Second, at least two of the insurance industry witnesses testified that elderly blacks live longer than elderly whites. This testimony was offered as part of the effort to explain why the industry ignores average race differences but insists it must consider average sex differences. The explanation would be insufficient even if it were true. But the fact is that there is no good evidence that elderly blacks live longer than elderly whites, and strong reason to believe the opposite.

Today's elderly blacks grew up and entered the work force under Jim Crow, and largely spent their working years at the lowest paid and most physically demanding jobs. They have suffered every form of discrimination and hardship. It would be anomalous indeed if they had better mortality experience than elderly whites while younger blacks, against whom discrimination was somewhat less severe, have much worse mortality than younger whites.

The conventional race-segregated tables show that, between ages 75 and 80, remaining life expectancy of blacks surpasses that of whites. But according to the same tables, black mortality rates exceed those of whites up to age 80, and differences in mortality rates between the races exceed differences in mortality rates between the sexes in all age groups between 25 and 55.² This paradox has been carefully investigated by many demographers. The greater reported life expectancy of elderly blacks in thought to be an artifact of inaccurate and inadequate data.³ Older blacks, who have had less formal schooling and are less likely to have had documentation of their ages, appear to be more likely than whites to overstate their ages. These exaggerated answers to questions about the ages of elderly blacks distort the conventional life tables at post-retirement ages. Thus, there is strong reason to believe that the racial crossover in mortality shown by the conventional tables does not exist in fact. The only reason to distinguish race and sex discrimination in insurance is a refusal to take sex discrimination as seriously as race discrimination.

The CHAIRMAN. Thanks for coming up.

Now let us move on to our first panel: Dr. Mary Gray, Ms. Gayle Melich, Ms. Judy Schub, Dr. Quincalee Brown, and Ms. Ellen Wernick.

Dr. Gray, why don't you start?

² U.S. Department of Health, Education, and Welfare, Public Health Service, National Center for Health Statistics, *Vital Statistics of the United States, 1977*, vol. 2. § 5: Life Tables at pp. 5-9 to 5-11, table 5-1 (Hyattsville, Md., 1980).

³ E. Kitagawa & P. Hauser, *Differential Mortality in the United States* 93-98 (1973); M. Spiegelman, *Introduction to Demography* 63-65 (rev. ed. 1968); Bogue, Misra & Dandekar, "A New Estimate of the Negro Population and Negro Vital Rates in the United States, 1930-1960," 1 *Demography* 339, 354 (1964); Meyers, "Errors and Bias in the Reporting of Ages in Census Data," 41 *transactions Actuarial Soc'y Am.* 395, 399-400 (1940); Rosenwaike, "A New Evaluation of United States Census Data on the Extreme Aged," 16 *Demography* 279, 286-87 (1979); Rosenwaike, "On Measuring the Extreme Aged in the Populations," 63 *J. Am. Statistical A.* 29, 40 (1968).

STATEMENTS OF DR. MARY GRAY, PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE; GAYLE P. MELICH, NATIONAL WOMEN'S POLITICAL CAUCUS; JUDY SCHUB, DIRECTOR OF LEGISLATION AND PROGRAM DEVELOPMENT, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.; DR. QUINCALEE BROWN, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN; AND ELLEN WERNICK, DIRECTOR OF CLUW CENTER FOR EDUCATION AND RESEARCH

Dr. GRAY. Thank you, Mr. Chairman.

I am Dr. Mary Gray. I am representing Women's Equity Action League, of which I am currently president.

There are a number of matters in discrimination in insurance with which WEAL, Women's Equity Action League, has concerned itself, but I would like to speak today to just a couple of the matters.

First of all, since I am both a statistician and a lawyer, the tension that exists between civil rights legislation, which protects the rights of individuals, and such things as the insurance industry, which are concerned with groupings and statistical sorts of things, is one that is familiar to me, but I do not think it is one that is irreconcilable nor do I think that civil rights for women or for anyone else need give way to statistical classifications.

First of all, any time one talks about such things as actuarial equivalence, it is very clear that actuarial equivalence can be determined in a number of different ways. It is certainly not necessary to divide only on the basis of sex. It is true that the purpose of insurance is to share the risks, but it is a matter of public policy how the risks should be shared.

Since it is a matter of public policy, it really should not be left to the insurance industry and the State insurance commissions, which have not been very sympathetic to the rights of women, to decide this matter of public policy. It really should not matter to the insurance industry how risks are classified so long as the actuarial basis is sound. They make the same amount of money reclassifying in a way that is consistent with civil rights legislation as they would some other way.

It has always been a mystery to me why the industry has been so much against such things. Now, the argument is, of course, that there is fair discrimination. That is the kind of discrimination that occurs in insurance. Even if we were to allow this, we would be involved in endless litigation as to what really is fair and what is not, because as it now stands, the actuarial tables that are used by the insurance industry do make distinctions on the basis of sex, but in most cases they bear no resemblance to what the real statistics show. Of course when you say real statistics, any statistician can tell you that you can divide and conquer any way you would like in order to let the statistics prove what you want.

For example, simply in the case of pensions, if you use the different interest rates in calculating annuities, you will get very different figures as to the costs involved in any conversion to a unisex plan or, indeed, any costs of the existing plans. Any study that has been made makes a number of basic assumptions, and most of them cannot really be justified as the only sorts of assumptions you

can make. You can always do another study which makes the figures come out differently.

If you had to litigate whether every existing insurance rate table really was fair to women, you would be involved in endless sorts of litigation. It simp'y is not a practical sort of way to approach the problem. Also, as Professor Laycock said in his testimony, one of the existing problems is that title VII covers employment-related plans, but when a private insurer is involved in these plans, we see a constant bouncing back and forth between the employer and the insurer as to who is going to accept liability and who has to change and so on and so forth.

Now, this problem would be resolved by this bill, and that is another reason we are supporting it so strongly. I think the main thing that one has to realize is that the widespread discrimination which now exists can be remedied by this sort of a bill, and there is no actuarial reason why we cannot compute rates without using sex as one of the bases. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF DR. MARY W. GRAY, PRESIDENT, WOMEN'S EQUITY ACTION LEAGUE

I am here to express, on behalf of the Women's Equity Action League, our strong support for S. 2204, the Fair Insurance Practices Act, and to urge its prompt enactment by the Senate. Congress has already legislated to outlaw discrimination in employment, education, housing, and credit. The Bill before you will prohibit discrimination by the insurance industry on the basis of race, color, religion, sex, or national origin.

The fairness of insurance availability and cost is a matter of public policy and cannot be left entirely in the hands of the insurance industry. The record of the industry is one of discriminatory practices that are blatant and widespread and clearly contradictory to the spirit of the non-discrimination legislation enacted by Congress in other fields. The decision you are now called upon to make is therefore long overdue.

The United States Congress must take the lead and set a national standard. Federal legislation is needed to prevent the disparate treatment, and the different degrees of enforcement in different states, that result from piecemeal state legislation.

Insurance discrimination, either overt or subtle, is widely practice on the bases of race, national origin, religion, and sex. In this statement I focus on insurance discrimination on the basis of sex. Sex-based insurance discrimination is not a matter of concern for only a small minority; women represent over one-half of the U.S. population and one-half of the electorate. Insurance costs and availability are especially important to women who work and women who are heads of household: 42 percent of all women are now in the workforce; 60 percent of these women are widowed, divorced or unmarried or work to raise their family income to a minimum of \$10,000 a year. Seventeen percent of all American families are single parent families headed by a woman.

Many of the discriminatory practices of the insurance industry are based on outmoded stereotypes. For example, limitation of access to disability insurance, as well as the assessment of higher rates, is premised on the belief that for women work is a mere diversion, to be given up at the first opportunity if disability insurance is available.

Many of those who failed to support the Equal Rights Amendment Claim to be in favor of the ER without the A. Elimination of discrimination in insurance is an important step in insuring equal rights for women; if equal rights are to be secured through legislation, this is the place to begin.

I. EVIDENCE OF WIDESPREAD SEX DISCRIMINATION IN ALL TYPES OF INSURANCE

The insurance industry has a long record of discrimination, first against blacks, then against women. Indeed, the National Association of Insurance Commissioners (NAIC) has recognized the existence of sex-based discrimination within the insurance industry:

"* * * [I]n the health and disability lines of insurance * * * many companies restrict the types and amounts of coverage which are available to females and charge rates for females which exceed male rates for identical coverage. Life insurance and annuity rates reflect lower mortality rates for females although the adequacy of the rate differentials are subject to question. Many life insurance companies have also been found to apply restrictions to the availability of coverage to females which do not apply to males * * * Availability of automobile insurance with some companies is also affected by marital status. The premium rates charged for homeowner and property insurance do not vary by sex although a single or divorced female may encounter more difficulty in obtaining coverage than a male in similar circumstances.¹

The extent of the discrimination involved can be clearly seen if we look more closely at (1) the availability of insurance, (2) the premiums charged, and (3) the terms and conditions that affect the benefits due. I want to address discrimination in only a few areas of insurance: health insurance, disability insurance, life insurance and pensions, and auto insurance.

II. IN THE AREA OF HEALTH INSURANCE

1. Availability

Coverage may not be available for prenatal and post partum care, family planning and gynecological disorders and related conditions.

2. Premium Rates

Rates fare substantially higher for women, even though claims for accident coverage are actually greater for men.

One form of sex discrimination: Insurance for pregnancy and related conditions

As Congress recognized when it enacted the Pregnancy Discrimination Amendment to Title VII in 1978, pregnancy discrimination is a particularly invidious form of sex discrimination.² Yet in the insurance industry, pregnancy and related conditions have almost uniformly been treated as a special case. We highlight insurance availability and coverage for pregnancy here because this benefit is of special importance to women and because the insurance industry remains strongly opposed to the concept of insurance coverage of these costs.

In terms of availability, pregnancy costs were traditionally totally excluded from health and disability plans. In individual coverage, many large insurers still do not provide maternity benefits. Even when maternity benefits are provided they are extremely low:

Only 38.44 percent of medical costs due to pregnancy are reimbursed, according to a 1975 Michigan survey.

A normal delivery costs approximately \$2,500, yet many major companies offer only \$500 as a maximum benefit for a normal delivery.

The insurance industry justifies its refusal to cover pregnancy-related costs on several grounds. First it argues that pregnancies cannot be considered risks because they are neither sickness nor an injury, and as a corollary, that they could be budgeted for. This argument totally ignores the fact that 12 percent of births are unwanted; in the case of black mothers this figure is even higher: up to 25.8 percent of births.³ Further, vasectomies, prostatectomies, and cosmetic surgery, as well as sports injuries are generally covered.

Second, the industry claims that the cost of coverage for pregnancy and related conditions would be prohibitive. But this claim has not been substantiated. On the contrary, the Citizens' Advisory Council on the Status of Women reported that a large insurance company determined that the increased costs would be only 10 per-

¹ Appendix I to Statement of Barbara J. Lautenheiser, on behalf of the American Council of Life Insurance and the Health Insurance Association of America before the Senate Subcommittee on Antitrust, 30 April 1980.

² Mr. Justice Stevens, in dissent in *Gilbert v. General Electric Corp.*, 429 U.S. 125 (1976), expressed this eloquently:

By definition, [a classification revolving around pregnancy] discriminations on account of sex; for it is the capacity to become pregnant which primarily differentiates the female from the male.

³ Supplemental Statement of the American Association of University Women submitted to the Senate Subcommittee on Antitrust on 16 June 1980.

cent of the premium rate payable by a group if 40 percent of the group's members were female.⁴

Coordination of benefits

Under the guise of coordination of benefits provisions in many state insurance regulations, women are systematically denied benefits for their dependents even though they have paid for such coverage. Typical provisions call for benefits to be paid on a mother's policy only if essentially the father will attest to the fact that he assumes no responsibility for the children; some companies require such verification for each claim, even when the parents are divorced and the mother has full financial responsibility as well as custody of the children—and in fact even when it is impossible to find the father. There is no reason why mothers should not be able to provide health coverage for their children on the same basis as can fathers.

III. IN THE AREA OF DISABILITY INSURANCE

1. Availability

Disability income insurance is rarely if ever available to women whose jobs are performed at home, while such insurance is available to men with identical job and risk factors.

Disability insurance is rarely available to female part-time employees (such as waitresses, domestic aides). Indeed, part-time employees in any occupation find it difficult if not impossible to obtain coverage. Since more part-time workers are women, this policy has a disparate impact on women.

Disability income insurance may be excluded for periods of disability resulting from medical or surgical treatment of sex-linked disorders.

2. Premium Rates

Ten out of thirteen insurance companies surveyed in Pennsylvania charged higher premium rates for women than for men carrying identical or better coverage.

Women are charged 150 percent higher rates than men in the same job classification in New York.

A rate differential of 45 to 115 percent exists between the sexes in Colorado.

Because of the industry's exclusionary practices, there is no data which really could support the differential rates.

3. Terms and Conditions of Benefits

Longer waiting periods are required for women before benefits are payable

There are shorter basic periods for women (maximum time for which benefits may be paid), such as ten years for men and two years for women.

Monthly benefits are subject to lower maximum levels for women.

IV. IN THE AREA OF LIFE INSURANCE AND PENSION BENEFITS

1. Availability

Under some life insurance policies, a married woman can purchase coverage only up to the amount of coverage held by her husband.

2. Terms and Conditions of Benefits

Waiver of premium option: A "premium option" provision eliminates the need for premium payment during disability. In most plans women, but not men, are required to show that they work outside their home, in a low risk occupation, and that they have a "definite need" before they may avail themselves of this benefit.

3. Premium Rates

Many private pension plans either charge women higher premiums or give them lower benefits than men. Insurers justify this practice by reference to the fact that in the general population the mortality of women is less than that of men. However, the basic principle underlying insurance is that of risk-sharing. Insurance companies could choose to classify risks in any number of ways, but they usually choose to do so on the bases of age and sex. Classifying by race would advantage blacks in annuities, but insurance companies do not use race as a classification.

Insurers argue that they must, as a matter of sound business practice, classify by sex. Obviously they need not do so; they have survived the elimination of race as a

⁴ See Sydlaske, "Comment; Gender Classifications in the Insurance Industry," 75 Columbia L. Rev. 1381 n. 43 (1975).

classifying factor and they can survive the elimination of sex as a classifying factor. Actuaries would have no trouble recomputing premiums and benefits based on whatever risk classification they are instructed to use, computing them in such a way as to guarantee the continued profitable operation of their companies. In fact, many companies are now doing so. As a matter of public policy, risks of longer life, as well as risks of the expenses of pregnancy, should be shared by the general group of insurees, not by women only.

Not only is treating every woman as some sort of "average" woman violative of the basic principle of non-discrimination—unequal treatment of individuals on the sole basis of their sex⁵ but the way insurance companies choose to do so is completely arbitrary and capricious. Rather than using tables based on the mortality of women, they use an arbitrary set-back of the male table to approximate (very roughly) the mortality of women; the "gap" between male and female mortality is not constant, varying from age to age. Due to past restrictive policies of insurers, there is little mortality history of insured females, particularly with respect to annuities. Moreover, what is known of the life expectancy of women in general is, by necessity, based on women in high pressure jobs or of substantial numbers of heavy smokers. Today's women may have life expectancies more similar to those of men, but this will not be reflected in the annuity benefits of women alive today. That the longer life expectancy of women in the general population in the United States is not due solely to biological factors is shown not only by their differential exposure of self-selected risks—smoking, drinking, accidental deaths—but by the fact that females do not have a greater life expectancy at every age in every country at every period of time.⁶

Even more telling evidence of the discrimination against women practiced by insurers is that many companies use a lesser setback (or none at all) in life insurance (where their greater longevity should be an advantage to women) than they do for annuities. It would appear that women are compensated for the discrimination in pension benefits by the benefit—dubious though it may seem to the retired college professor surviving on cat food—of a longer life. In fact:

While the "average woman" dies later than the "average man," considerable overlap exists in the distribution of death ages. If at a single point in time we were to pick at random 1,000 men age 65 and 1,000 women age 65, and follow them through and observe their death ages, we would find an overlap of 84 percent. This means that we could match up 84 percent of the men with 84 percent of the women as having an identical year of death. This leaves 16 percent of the population, consisting of the 8 percent who are men who die relatively early, unmatched by women's deaths, and the 8 percent who are women who die relatively late, whose deaths are unmatched by male deaths.

Allowing employers [or insurers] to provide higher pension benefits for men than for women on the grounds of higher cost is to allow employers to assume that all men are like the "average man" and all women are like the "average woman" in terms of death age. It allows employers to arrange things so that the savings in annuity cost for the 8 percent of the population consisting of excess men who die early are entirely monopolized by men, although 84 percent of all men are in the overlap group.

The extra burdens imposed by the higher annuity costs of 8 percent of the population consisting of excess women who die late are entirely allocated by employers to women, 84 percent of whom are in the overlap group. This is "because" the conformation of the sex organs of men do not match those of the excess people who die late.

The women in the large overlap group with lower pensions are, to say the least, in an unfortunate position. The considerable difference in their living standard is not even compensated for by the dubious utility of a longer life; they do not cost the system any more than men do; their only crime is that they have the same sex organs as the few people in the longer-lived group.

⁵ In *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978), the U.S. Supreme Court declared the use of sex as the only classification other than age in employment-related plans to be a violation of Title VII. Non-employment related plans are, of course, not subject to Title VII. See also, *Reilly v. Robertson*, 266 Ind. 29, 360 N.E.2d 171, cert. denied, 434 U.S. 825 (1977); *EEOC v. Colby College*, 589 F.2d (1st Cir. 1978), rev'g 439 F.Supp. 631 (D. Me. 1977); *Peters v. Wayne State University*, 476 F.Supp. 1343 (E.D. Mich. 1979), appeal pending 6th Circuit, Nos. 79-1450, 79-1670, 79-1671; *Spirit v. TLAA*, 416 F.Supp. 1019 (1976), 475 F.Supp. 1298 (1979); *Henderson v. Oregon*, 405 F.Supp. 1271 (D. Ore. 1975).

⁶ L. Brilmayer, R. W. Hekeler, D. Laycock and T. A. Sullivan, "Sex Discrimination in Employer Sponsored Insurance Plans: A Legal and Demographic Analysis," 47 Univ. of Chicago L. Rev. 505 1980.

This seems a slender reason to condemn them to a considerably meaner living standard than men. Public policy . . . requires that the burden of supporting the 8 percent of the population who are longer lived be shared by the entire population, rather than putting the whole burden on the 42 percent of the population (most women) who are like the long-lived group in sex organs but not in longevity.⁷

Thus we see that allowing insurers to group by gender results in similarly situated—in terms of longevity and contributions to the pension plan—men and women being treated differently in benefits; the essence of discrimination is to disadvantage individuals simply because of their membership in a particular race, gender, or national origin group. Such discrimination should be prohibited by law.

The notion of life expectancy is one not well understood by the non-quantitatively oriented. However, suffice it to say that expectancy must be defined relative to some group. I have one life expectancy as an American—I have a longer expectancy as a woman, a shorter life expectancy as someone in a stress-filled position, a longer life expectancy as a non-smoker, a shorter life expectancy as one who is overweight. There is no reason why our sex should be singled out to penalize me or my female colleagues when we retire; our sex will not assure us of a longer life, only of a life in more straitened circumstances.

I look at my male colleague who has the same work history as I—same number of years of work, same salary, same contributions to a pension plan. There are many things he can do to increase his life expectancy. He can quit smoking, quit drinking, lose weight, indulge in preventive medical care. He can do other things which have only a "statistical" effect—like moving a block up Connecticut Avenue out of the District of Columbia and into Maryland. None of these will reduce his periodic pension benefits, even though those in the first category will increase his total lifetime income from them. I can do the reverse of all these things and reduce my life expectancy. But short of being paid a higher salary or living on less disposable income than my male colleague, there is nothing I can do to increase my pension benefits. I am doomed to retire at 15 percent less per month than the colleague who now earns what I do.

Not only is Women's Equity Action League the leading advocate on issues of economic equity, but we have focused in the past few years particularly on issues of concern to older women. These women have been disadvantaged throughout their lives by being paid lower salaries, by being denied opportunities, by not being protected in their homemaker roles. We should not further disadvantage them by double discrimination in their pension benefits.

V. AUTO INSURANCE

Much is often made of the "advantage" enjoyed by women in auto insurance; industry representatives speak of the \$700 million "income transfer" from young women to young men which would occur were discrimination on the basis of sex prohibited. In fact, the existing discrimination is against young male good drivers and in favor of young female bad drivers. Any "income transfer" should be from bad drivers to good drivers, irrespective of sex. Driving records should be the determining factor in auto insurance rates. It is just as bad to penalize men by the use of stereotypes, however accurate they may be, as it is to penalize women; such a practice is a denial of individual rights.

Moreover, there is in fact discrimination in auto insurance against women. Such discrimination is disguised as discrimination on the basis of marital status, but in fact such discrimination is far more prevalent with respect to women applicants for auto insurance than with respect to their male counterparts, at least for those over twenty-five and with respect to obtaining coverage at all rather than with respect to rates.

VI. COSTS

There are two important points to be made with respect to costs. The first is that non-discrimination in insurance requirements would on the whole result in a financial savings for women. Over \$10,000 is contributed each year to my retirement plans, whereas the amount spent on my auto and life insurance is less than one-tenth of that—and in fact I personally do not benefit from lower rates for women in auto insurance nor in the majority of my life insurance.

More generally, however, the insurance industry has offered greatly inflated estimates as to what the costs of removing discrimination would be. Correct estimates

⁷ B. Bergmann and M. Gray, "Equality in Retirement Benefits," 8 Civil Rights Digest 25 (1975).

do still involve large sums of money, but the amounts are a tiny fraction of the total money in the insurance industry. For example, one estimate of increased costs for equity in pension plans is one billion dollars—but this is out of a 650 billion dollar total. In fact, in most cases the costs would be minimal. New rates would have to be computed and published, but such changes are ongoing in any event. What is involved is a redistribution of the costs and of the benefits—a redistribution on a more equitable basis. That men expect more favorable treatment than women does not mean that they must be guaranteed such favoritism in the future. Expectations of continued more favorable treatment have in the past been defeated by legislation outlawing discrimination in such fields as education and employment.

Critics of non-discriminatory policies also point, e.g., to complications in IRS and ERISA regulations which would arise if pensions were required to be unisex. In fact, these problems are relatively minor. For example, if there are provisions that various options in a retirement plan be actuarially equivalent, the equivalence need not be determined by the use of sex-segregated mortality tables; actuarial equivalence can just as well be based on unisex tables. Risks can be classified however the policy-makers choose to classify them. Policy should be made by Congress, not by the insurance industry.

Finally, it should be pointed out that the feasibility of converting to non-discriminatory practices cannot be seriously questioned. The majority of pension plans pay equal benefits to men and women, many insurers sell unisex life insurance, some companies have non-discriminatory health and disability coverage.

CONCLUSION

1. There is still evidence of discrimination on the basis of sex by the insurance industry.

2. In accordance with the spirit of Congress' previous legislation in employment, education, housing, and credit, and the trend of our legal decision, Congress must outlaw discrimination on the basis of race, color, sex, or national origin in the insurance field as well.

3. No serious distortion to existing market relationships in the insurance industry would result from the prohibition of discrimination. In particular, there is no actuarial bar to equal treatment nor are the costs of any changeover significant in relation to the total money involved in insurance.

4. A simpler system based on an averaging of costs and benefits over the whole population will cover more adequately and more equitably both men and women.

5. Equality of access and terms and conditions of insurance as well as equality in rates is important and needs to be guaranteed through legislation.

6. Insurance is an important part of economic equity for women, in particular for homemakers, women heads of families and older women. If we are to have equal rights without the ERA, discrimination in insurance must be ended.

We therefore urge you to vote for the enactment of S. 2204.

The CHAIRMAN. Let me ask you a question. I normally let the entire panel finish, but as I am conducting this alone right now, I can loosen it a bit. You are one of the few statisticians I have that are testifying today.

The American Academy of Actuaries did a study on H.R. 100, which is a bill very similar to this, and estimated that the cost impact of the bill to women would be an additional \$1.3 billion in insurance premiums. Could you comment on their study?

Dr. GRAY. First of all, when you talk about additional premiums, that is only one way of handling the problem. Another way would be to redistribute the existing money. That is to say, instead of letting the women, who really do not have any longer life expectancy than men, subsidize the longer lived men, you could let everyone who has a shorter life subsidize everyone who has a longer life.

So it is not necessarily a question of additional costs. It could be a question of redistribution of existing pools of money, so to speak. That is No. 1.

No. 2, how you compute this depends upon making certain assumptions. For example, the interest rate. As I said, if women live

longer, if you take that as an assumption, that means that some of the money that is their annuity is left in the hands of the insurer, who is investing it and is drawing interest until they take it out.

So whether in fact there is additional money involved or how much additional money is involved depends upon what sort of interest rates you assume. Now for example, one insurance company has been assuming a 3 percent interest rate on the investments. Well, that does not seem very realistic. Now exactly what you should assume is more questionable, and the figures you get depend upon what you assume, but 3 percent seems unreasonable.

So if you compute the cost that way, then of course they are going to be greatly inflated. But even if you assume a \$1.3 billion cost, you are talking about hundreds of billions of dollars involved. So that while a billion dollars may seem a great deal, if you have, as one estimate I heard recently, \$650 billion involved in these pensions plans, \$1.3 billion is not that much. But I do not believe the figure anyway.

The CHAIRMAN. In a nutshell, this is what you are saying: There are probably 100 different ways you can divide people up. You can divide them up on sex, on geography, on age, on whether they smoke or not. And in terms of major distinctions, that is a policy decision that should be made by a representative government rather than a distinction that ought to be made in whatever way they want to make it by business.

Dr. GRAY. That is exactly right. It does not seem to me that it is the responsibility of the insurance industry to set public policy in such an important area of economic discrimination.

The CHAIRMAN. And indeed, when they could discriminate on an actuarial basis, as they say, on black versus white or Wyoming versus New York or any other ways, they do not; and yet they do discriminate against women and justify it in their minds as actuarially sound without consistently following that through and making the same kinds of actuarial judgments on a whole variety of other characteristics.

Dr. GRAY. Well, I feel that using sex is simply an arbitrary and capricious decision on the part of the insurance industry when there are other things that could be used, or—and many insurance companies do this—you could get along very well without using sex. The Federal retirement policies, social security, many group insurance plans do not use sex. There are many insurers who manage to stay in business very well without using sex as a risk classification.

The CHAIRMAN. I was intrigued. There is some testimony later on from several insurance companies that sell gender-neutral auto insurance. They are both opposed to the bill and they do not like the Federal intrusion, but from the standpoint of business it does not create any difficulty for them. They manage to sell policies. In fact, they are doing quite successfully with them.

Dr. GRAY. I can understand not liking Federal intrusion, but it seems to me that the States have had long enough to deal with the issue and they simply have not done so.

The CHAIRMAN. I have been in this business of politics for 20 years and I understand that nobody likes government to regulate them. It is all right to regulate you, but do not regulate me. That

comes with the turf and I understand it. But there are companies that do indeed sell policies that are gender neutral and they make a profit at it, and it does not cause them some incredible inconvenience they just cannot live with or cause them to lose money.

Dr. GRAY. Well, as a matter of principle, when I have a choice to buy group life insurance, I always buy from companies which sell unisex policies. Unfortunately, in my pension where unisex would help me, I am forced by my employer to put a lot of money in a plan which is not unisex, in spite of the fact that that is supposedly covered by title VII.

The CHAIRMAN. As a matter of fact, I will say to the company that I was intrigued by their automobile policy and the factors they use. I am going to call them up because I thought in six out of the seven factors they would rate me more favorably than the average, and I want to see what they would charge me for automobile insurance as opposed to what I am presently paying.

Dr. GRAY. That sounds like a good idea.

The CHAIRMAN. Ms. Melich.

Ms. MELICH. Mr. Chairman, thank you for the opportunity to appear before you today.

I am Gayle Melich, executive director of the National Women's Political Caucus, a nationwide multipartisan organization with over 60,000 members. NWPC is dedicated to electing and appointing women to policymaking positions at all levels of government and to speaking out on issues of concern to women. The caucus applauds this committee for taking a leadership role on the issue of sex discrimination in insurance.

The question is not whether the insurance industry discriminates on the basis of sex. It does. Our concern here is the extent to which this practice is unfair to women and inconsistent with national policy and the impact such discrimination has on the economic health of families.

Women are denied access to certain types of insurance. The scope of coverage provided to women policyholders is limited and the premium rates are frequently higher. If the purpose of insurance is to provide economic security, it is surely failing to meet the needs of most women in that regard.

The industry claims that discrimination is a neutral term, merely making distinctions between groups of people. They say that this discrimination is rational, not unfair, and even necessary to classify policyholders in order to predict financial risk. In fact, the discrimination on the basis of sex most often works to the disadvantage of women.

The insurance industry may claim to use discrimination in a neutral and fair sense, but in practice it is far from being so. The insurance industry uses sex as the primary distinction in determining types of insurance offered, options, and rates. We strongly believe that this practice should be discontinued and that individuals should be treated as individuals, not as members of an arbitrarily classified group.

The best way to insure equitable treatment of women is to eliminate gender-based distinctions. Classification by sex is not only unfair and burdensome to women, but also it is a largely irrelevant, artificial classification. Criteria other than sex, such as smok-

ing, medical history, driving record or occupation are better indicators of the insurer's potential risk, yet the insurance industry rationalizes its continued and pervasive use of gender as a fundamental classification.

In our full statement I go into several specific areas: For instance, disability insurance, health insurance, and particularly maternity coverage and life insurance. These are just some of the problems women face in obtaining insurance. I emphasize that under present industry practices, these problems are impossible for us to overcome.

The impact these inequities have on the actual lives of women and their families is devastating. Today about 50 percent of all women are employed, and the vast majority of them work out of economic necessity. They are the sole support for themselves and their families or they provide the necessary addition to their husband's income so their family can survive today's economic situation. The economic contribution of a full-time homemaker is indisputable. To replace the many and varied jobs a homemaker performs is beyond the limits of the majority of American families. It is essential that women are able to obtain the coverage necessary to provide financial security for their families. The lack of consistency of policy within the industry also works to women's disadvantage.

For instance, the industry bases much of its arguments in life insurance on the 7-year average difference in life expectancy for men and women but offers women only a 3-year setback on rates. Also, some companies use sex-based tables for figuring pensions and then use unisex tables for life insurance. In some cases the industry claims the need to charge women higher rates on statistical experience, in others the explanation is a lack of statistical experience.

Most of the discriminatory policies have little or no actuarial justification at all and we hope the panel of experts today will make this perfectly clear. Legislation at the Federal level is necessary because of the pervasiveness of the problem and because the States have failed to act. The National Women's Political Caucus supports the passage of the Nondiscrimination in Insurance Act, title V, and S. 2204, the Fair Insurance Practices Act, which will bring the insurance industry into compliance with national nondiscrimination policies and will fill a major gap in equal protection provisions.

The bill provides that the bulk of the responsibility for the regulation of insurance will remain with the States. The passage of this bill will bridge the gap between the practices of the insurance industry, which visualizes people as members of groups, and our Nation's civil rights tradition which demands that individuals be treated not simply as members of a gender, racial, religious or ethnic group but as individuals with individually applied standards.

Thank you, Mr. Chairman, for your interest and continuing commitment to eliminating discrimination and for holding these hearings.

[The statement follows:]

STATEMENT OF GAYLE MELICH, EXECUTIVE DIRECTOR, NATIONAL WOMEN'S POLITICAL CAUCUS

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today. I am Gayle Melich, Executive Director of the National Women's Political Caucus, a nationwide, bipartisan organization with over 60,000 members in 300 state and local caucuses. The NWPC is dedicated to electing and appointing women to policy making positions at all levels of government, and to speaking out on issues of concern to women. We believe that individuals deserve to be treated as such in all areas of public policy.

The National Women's Political Caucus applauds this committee for taking a leadership role on the issue of sex discrimination in insurance—an issue that can mean the difference between economic disaster or economic survival for many American families today.

The issue for this hearing is not whether the insurance industry discriminates on the basis of sex. It does. Our concern here is the extent to which this practice is unfair to women and inconsistent with national policy, and the impact such discrimination has on the economic health of families.

I would like to touch on several areas of insurance discrimination which particularly hurt women: the area of access to insurance, unfair insurance rates, and the terms and conditions of insurance eligibility.

THE PROBLEM

Women are denied access to certain types of insurance. The scope of coverage provided to women policyholders is limited, and the premium rates are higher. If the purpose of insurance is to provide economic security, it is surely failing to meet the needs of most women in that regard.

The industry claims that discrimination is a neutral term, that discrimination is merely making distinctions between groups of people. They say that this discrimination is rational, not unfair, and even necessary to classify policyholders in order to predict the financial risk to the insurers.

But we know from our many years spent working for equity for women, that discrimination on the basis of sex most often works to the disadvantage of women. The insurance industry may claim to use discrimination in a neutral and fair sense, but in practice, it is far from being so.

The insurance industry uses sex as the primary distinction in determining types of insurance offered, options, and rates. We strongly believe that this practice should be discontinued, and that individuals should be treated as individuals, not as members of an arbitrarily classified group. The best way to ensure the equitable treatment of women is to eliminate gender-based distinction—there is no way separate can be equal.

Classification by sex is not only unfair and burdensome to women, but also it is a largely irrelevant, artificial classification. Criteria other than sex, such as smoking, medical history, driving record, occupation or recreational activities are better indicators of the insurer's potential risk. yet the insurance industry clings to and rationalizes its continued and pervasive use of gender as its fundamental classification.

Let me briefly review with you some of the ways in which gender distinctions work to the disadvantage of the woman seeking adequate insurance protection.

DISABILITY INSURANCE

The insurance industry fails to fully recognize the economic importance of the work women perform—both paid and unpaid. Women thus have limited access to disability insurance. Disability insurance is essential to protect against loss of earnings due to inability to work. Homemakers, who perform undeniably valuable work within the home, are almost completely prevented from obtaining disability insurance. Part-time workers, 72 percent of whom are women, and those in occupations with high proportions of women such as domestic workers and waitresses, have very limited access to disability insurance as well.

Even where disability insurance is in fact available to women, women pay more than men for identical coverage. A Colorado study showed women pay from 45 to 115 percent more for disability coverage, while in New York, a study revealed rates up to 150 percent higher for women. Actuarial tables are still in use that are based on long outdated statistics. Employment patterns for women have changed dramatically over the past 30 years. Our insurance protection must keep pace with these patterns.

The scope of disability benefits also work to women's detriment. Waiting periods, the time before benefits are payable, are generally longer for women. The benefit period, the time the benefits are paid to the insured, and the basic period, the time the worker is totally disabled, are shorter for women. For instance, a male in a low-hazard occupation can obtain a policy with a benefit period of ten years. The policy of a woman in the same hazard classification is usually limited to a two year benefit period.

These gross inequities exist even within specific job categories. That is, a woman and a man with the very same job, facing equal risks, cannot get equal protection against debilitating injuries. A classification system based on sex-neutral criteria would be a giant step toward eliminating these inequities.

HEALTH INSURANCE

Considering the high costs of medical care today, the danger of inadequate health insurance is self-evident. One central medical concern of women is pregnancy. Here as with disability insurance, access is limited and adequacy is lacking. A Michigan study done in 1975 showed that insurance plans covered less than half of the needed medical costs of maternity. A 1974 Pennsylvania study revealed the use of 1958 hospital rates by insurance companies to establish the maximum limit in covering maternity costs.

The 1978 Pregnancy Disability Act has helped by requiring that pregnancy and related conditions be treated as other disabilities, but the act covers only employee group policies. In individual and private group policies, maternity coverage is still routinely excluded.

The insurance industry seems to believe that women, because of their biological role, should assume the full economic responsibility for pregnancy, regardless of its effect on women's ability to gain financial security. It is ironic that a society which purports to highly value motherhood forces women to assume the full cost of reproduction.

LIFE INSURANCE

The concern for women in the area of life insurance centers on the near universal use of sex-based actuarial tables to set rates and benefits. Because women on the average live longer than men, all women receive smaller monthly benefits. But—and this is one area women have a slight advantage over men when sex-based classifications are used—premium rates for women are generally lower. However, if the insurance industry were to hold as strictly to the mortality statistics in setting rates as in determining monthly benefits, women would have an even greater advantage. Women on the average outlive men by 7 years. But insurance companies use just a three year set-back in establishing premium rates.

The problem with sex-based actuarial tables is clear: by classifying an individual as part of a large and diverse group, such as all women, the perceived needs of that individual are bound to be distorted. Statistics show that, while women do tend to outlive men, the difference is relatively small. In one study, less than 14 percent of the women did not match the death ages of the men. The similarities are certainly more significant than the differences.

The 1978 Supreme court ruling in *Los Angeles Department of Water and Power v. Manhart* clearly rejected the use of broad groupings in setting rates and benefits and held that individuals must be treated as individuals. The Court ruled that the treatment of individuals as merely components of large groups, for instance race, religion or sex, should be prohibited because "there is no assurance that any individual woman or man . . . will actually fit the generalization." The National Women's Political Caucus fully supports the extension of this policy throughout the insurance industry.

Women trying to obtain adequate life insurance coverage face another problem—the stereotyped view of women within this society. Many options which are available to men (still presumed to be the "breadwinners") are simply not made available to women regardless of their marital status and the number of their dependents. Where a man may automatically qualify for a waiver of premium option, a woman must prove her need. It is likely also that she will have to pay more than the man for that same option. In addition, sometimes limits are placed on the amount of coverage which a married woman may purchase—the limit being the amount of coverage held by her husband. The reverse is never true.

THE NEED

These are just some of the problems women face in obtaining insurance. You will be hearing more on these and other problems throughout this day of testimony. I must emphasize that, under present insurance industry practices, these problems are impossible to overcome. A woman, regardless of her health, occupation or other indicators of life expectancy, can never obtain the rates offered men simply because of her sex.

I ask you to think for a moment of the devastating impact these inequities have on the actual lives of women and their families. Today 50 percent of all women are employed or seeking employment. Women are entering the workforce at a rate of 2 million a year. These women—the vast majority of them—work out of economic necessity. They are the sole support for themselves and their families, or they provide the necessary addition to their husband's income so their family can survive today's economic situations. A growing number of U.S. families are female-headed single parent families—14.6 percent in 1980. It is essential that these women are able to obtain the coverage necessary to provide financial security for their families.

And the important economic contribution of the full-time homemaker is indisputable. To replace the many and varied jobs of a homemaker is beyond the economic limits of the majority of American families. Fair and comprehensive insurance coverage for all must become available so that these families will not face economic devastation from the death, sickness, old age or disability of its breadwinners.

NATIONAL LEGISLATION IS THE ANSWER

Federal legislation is needed because sex-based discrimination is blatant and pervasive through insurance. We believe there is nothing "neutral" about this discrimination. The industry seems to have used gender-based distinctions to its own advantage and convenience, with little ultimate regard for the needs of women seeking financial security.

The lack of consistency in policy within the industry also works to women's disadvantage. For instance, the industry bases much of its arguments in the life insurance area on the 7 year average difference in life expectancy for women and men, but offers women only a three year set-back on rates. Also, some companies use sex-based tables for figuring pensions, then use unisex tables for life insurance.

In some cases, the industry claims the need to charge women higher rates based on statistical experience; in other cases, the explanation for higher rates is lack of statistical experience. Most of the discriminatory policies have little or no actuarial justification at all. In no way is the continued use of sex-based discrimination justified.

Legislation at the federal level is necessary. Only 12 states have enacted anti-discrimination statutes—and most of these state laws are limited in their application.

The Non-discrimination in Insurance Act, Title V of the Women's Economic Equity Act (S. 888), would prohibit discrimination on the basis of race, color, religion, sex or national origin in the availability, conditions, paying rates, and receiving benefits from insurance. The National Women's Political Caucus fully supports passage of this bill.

Enactment of the Non-discrimination in Insurance bill will bring the insurance industry into compliance with national nondiscrimination policy and will fill a major gap in equal protection provisions. And the bill provides that the bulk of responsibility for regulations of insurance will remain with the states.

Passage of this bill will bridge the gap between the practices of the insurance industry, which visualized people as members of groups, and our nation's civil rights tradition which demands that individuals be treated not simply as members of a gender, racial, religious or ethnic group but as individuals with individually applied objective standards.

Thank you, Mr. Chairman, for your interest and commitment to eliminating discrimination and for holding these important hearings:

The CHAIRMAN. Let me ask you a question. It is a speculative one that I will ask the insurance industry later. I think it will become clear that there are 100 different ways that you could classify people, men and women being 1 of the 100, Oregon and Wyoming being 1 of the 100, smoking and nonsmoking being 1 of the 100.

Why do you think that when there are so many various ways to classify people, that the insurance industry does single out men

and women and does not use some of the other equally, I will say, valid or invalid classifications? What is unique? Is there some kind of historical bias? What do you think the reason is?

Ms. MELICH. One could be a little paranoid and suspect that there is a bias. I would like the insurance industry to answer why your question is true. I think that it is particularly unfair, and the members of my organization feel this way, that you should not be discriminated against on something that is not voluntary. Smoking is voluntary. Your driving record is something you have some control over. Those are the things we think the insurance industry should look at, not something you have no control over.

The CHAIRMAN. When I started to practice law, there were no women partners in any of the major Portland law firms, and even unusual to have a woman associate, let alone a partner. And, of course, it was presumed that they could only do certain kinds of cases, estates and probates. They certainly could not go to trial and try cases because their hormones simply would not stand up to that kind of pressure.

I remember all of those shibboleths at the time and how fantasized they seemed to me then. They clearly are, now. My gosh, I would be hesitant to try any case against half a dozen of the best women trial lawyers I know in Portland. They would just beat me hands down. It would not even be a fair contest. They ought to be barred from the courts if I have to practice against them.

And we can all remember the ads in the 1960's, men and women and the different salaries for the same jobs. I sometimes think there is a built-in bias among the establishment in business that women really should not be in the marketplace, that is the problem, and if you would just get out of the marketplace, things would be better, and everything is stacked to make it difficult for you to get into the marketplace.

I think it is probably unconscious in most cases. I do not think it is a conscious discrimination. Maybe it is in some cases, but certainly it is there. I noticed the President's statement the other day about ladies: Now if you were not in the workforce, we would not have an unemployment problem. You do not have to comment.

Let us go to Ms. Schub.

Ms. SCHUB. Mr. Chairman, I am Judy Schub. I am the director of legislation and program development of the National Federation of Business and Professional Women's Clubs, Inc., which is often called BPW. BPW was founded in 1919 to improve the status of women in the work force. Today we have over 155,000 members, both men and women, in over 3,500 clubs. There is a BPW club in every congressional district in the United States.

We appear before you today in support of S. 2204. We have been concerned about insurance discrimination for over a decade. We think the time has come for Congress to act and enact legislation to eliminate discrimination in this major sector of the economy.

Sex discrimination in insurance damages many women, whose need for insurance now is greater than at any time in the past. Women face discrimination in the availability, scope and cost of health and disability insurance. In both health and disability insurance, women often pay more for less protection. Maternity cover-

age is frequently excluded. When it is offered it is expensive and limited in scope.

In health insurance, maternity is one of the only, if not the only, condition where policies offer a flat rate of benefit regardless of cost. Women face serious problems in getting disability coverage. Some groups of women, such as waitresses and domestic workers, cannot get coverage while men in similar occupations can.

Even when they can get insurance, women cannot get adequate disability coverage. Maximum coverage allowed for women is lower than that for men, and basic benefit periods for women are often substantially shorter than those offered to men. These limitations on benefit amounts and benefit periods imply that women's earnings are marginal or worse, that women are more likely to malingering than men.

One of the effects of sex discrimination in health disability insurance which has not been closely scrutinized is the impact on business, particularly small business. Employers who have a substantial number of women in their work force will pay more for group health or disability plans. This higher cost may force employers to offer fewer benefits to their employees or, worse, may lead to employment discrimination.

The CHAIRMAN. Go by that again? An employer who has 50 employees, if that employer has 40 women and 10 men, they will pay more for their group health policy than if they have 40 men and 10 women?

Ms. SCHUB. Yes. We really do not know what the exact practice is, but 10 years ago an underwriting manual said that if the work force was 11 percent female they would pay more. So it does not have to be a predominantly female work force. But we do not really know what the cutoff is now. It might be 20 percent. It clearly might lead to some employment discrimination.

Women as a class live 6 to 9 years longer than men as a class right now. I do not think anybody is arguing about that.

The CHAIRMAN. They do, but that varies dramatically even from State to State. That is a uniform classification nationwide.

Ms. SCHUB. That is correct, and it is different in different parts of the country. And we have seen the insurance industry saying that this is universal worldwide. We have started to look into this and found that that is not universal, that it is not worldwide. It tends to be only in the industrialized countries.

Because of this difference, women are going to pay more for their pensions and annuities or receive smaller benefits, and they are going to get a slight advantage in life insurance. What we find so interesting is, where the longevity is an advantage for women, such as life insurance, most companies are still using the 3-year setback from men's rates; where it is a disadvantage, they use the 6- to 9-year differential.

The industry argues that these sex-based tables are necessary because longevity differences between the sexes are biological and not related to socioeconomic factors. We think that this argument is wrong, because sex discrimination is wrong. There is no such thing as fair discrimination and unfair discrimination.

We think there are parallels between race and sex, but the industry does not discriminate on the basis of race because it is against the social ethic.

The CHAIRMAN. It is interesting; they used to. There is an interesting book out called "The Metropolitan Life" by Marcus James. It is a history of the company. It talks about the writing of insurance for minorities. Colored people became a factor in insurance in the 1870's and then they discovered that they had a higher mortality. They changed the rates, and then States would pass laws, and then they would quit writing, as they called them, for "coloreds."

They have gone back and forth on it, but at the moment their policy is: We are not going to discriminate on the basis of race. Whatever conclusions they have come to, I am happy that they have come to that conclusion, but it has not been a uniform one and they have certainly flopped back and forth over the last century about what they are going to do.

Ms. SCHUB. They have said in testimony that to discriminate on race is contrary to public policy and general ethics. That implies that sex discrimination is OK.

The CHAIRMAN. Yes, they are going to testify to that effect pretty quick. Stay around.

Ms. SCHUB. One thing that I would like to say is, we have heard these arguments before. We heard them with the Equal Pay Act; we heard them with the Civil Rights Act of 1964; we heard them with the Equal Credit Opportunity Act. We know now that there were no catastrophes, that industries could cope, that they can devise sound business practices that do not discriminate.

The CHAIRMAN. The credit one is the one I am most familiar with because that passed after I had come here. I was on the Banking Committee at the time they considered it. I remember the arguments that indeed you were worse credit risks. That was the argument, so it was a fair classification, as if all women were worse credit risks, the best woman was a worse credit risk than the worst man. Therefore it was tougher for you to get a credit card, and if we eliminated that justifiable classification the credit business would come to an end and merchants would not be able to sell goods and we would have a depression.

Ms. SCHUB. I remember it, too. We can see now that the dire consequences did not happen. If anything, the industry got stronger.

The CHAIRMAN. We have a depression for other reasons that I cannot fathom, although there would be those that would try to tie it to that act.

Ms. SCHUB. I would just like to say in conclusion that we do think the time is now for national policy to be set in this area. We do not think an industry should be allowed to go on discriminating against more than half of the U.S. population, and we do need national standards.

Thank you.

[The statement follows:]

STATEMENT OF JUDY H. SCHUB, DIRECTOR OF LEGISLATION AND PROGRAM DEVELOPMENT, NATIONAL FEDERATION OF BUSINESS AND PROFESSIONAL WOMEN'S CLUBS, INC.

The National Federation of Business and Professional Women's Clubs, Inc. (BPW) was founded in 1919 to improve the status of women in the workforce. Since its es-

tablishment over 63 years ago, the objectives of the Federation have remained the same: to elevate the standards and promote the interests of women in business and the professions and to promote full participation, equity and economic self-sufficiency for working women. Today, BPW has a membership of over 155,000 men and women, living in all fifty states and the District of Columbia, Puerto Rico and the Virgin Islands. There are over 3,500 BPW clubs across the nation, with at least one club in every Congressional district in the United States.

We appear before you today in support of S. 2204, the "Fair Insurance Practices Act." BPW has been concerned about insurance discrimination for more than a decade. We believe the time has come for legislation to be enacted to eliminate discrimination in this major sector of the economy.

Sex discrimination in insurance affects the availability of insurance to women, the terms and conditions of some types of insurance, and the rate structure. This discrimination damages millions of women whose need for affordable insurance coverage is greater now than at any time in the past.

The role of women in our society has changed dramatically, with women now constituting almost half of the American labor force. Well over a million women a year were added to the workforce during the decade of the seventies. Projections indicate that by 1990, 95 percent of American women, age 16 and over, will be in the labor force, compared to 52 percent in 1981. Despite this trend, the insurance industry continues policies and practices that reinforce the current inferior legal and economic status of women.

Women work for the same reasons that men work—to support themselves and their families. Nearly two-thirds of all women in the labor force in 1978 were single, widowed, divorced or separated, or had husbands who earned less than \$10,000 a year. In 1979, nearly half of all married women were working, and full-time working wives contributed an average of 38 percent of their families' income. These women need equal access to insurance.

Sex discrimination in insurance is widespread. Insurance companies use sex-based actuarial tables to determine premium rates and benefits in life insurance and pension/annuity programs. Gender-based statistical tables are also used for setting rates in health and disability insurance. Common insurance practices discriminate against women in the availability of options. A brief review of the various types of insurance illustrates the pervasiveness of sex discrimination.

Health Insurance.—Women frequently pay higher rates than men for identical coverage. An Iowa study showed women pay as much as 50 percent more than men for the same policies. A 1975 survey of seven insurance companies in Illinois showed that, on the average, women paid 68 percent more than men for health insurance. Many health insurance policies exclude maternity coverage. When maternity coverage is available, it is expensive and limited in scope. A Michigan study showed that health insurance plans covered only 38 to 44 percent of actual maternity costs. Maternity is one of the only, if not the only, condition where policies offer a flat-rate benefit, regardless of cost. In the Illinois study cited above, no company applied flat-rate benefits or additional premiums for any other condition. Further, many health insurance policies exclude or limit coverage of other medical conditions exclusive to women, such as gynecological disorders, while exclusively male conditions are rarely excluded.

In health insurance, underwriting practices continue to be based on the assumption that women are dependent upon their husbands. For example, a husband's insurance policy is often assumed to be the primary policy when benefits are claimed for dependents, regardless of which parent's policy is more extensive. In other cases, a wife must prove that her husband is financially dependent upon her before she can cover him under her insurance.

Disability Insurance.—Women have greater difficulty getting disability coverage than men. Women in certain occupations, such as domestic workers and waitresses, do not have access to coverage, while men in similar occupations are able to get coverage. Women who work out of their homes are often denied coverage, while men similarly situated are insured. Part-time workers, both men and women, usually cannot get coverage. Since more than 70 percent of the part-time labor force is female, this exclusion has a disproportionately negative effect on women. Even when women can get disability coverage, it costs more and the benefits are lower. In 10 out of 13 companies surveyed in Pennsylvania, premium rates for women were consistently higher than for men with equal or better coverage. Companies sometimes classify men and women in the same occupations in different risk categories, putting women in the higher risk category and charging them higher rates. Maximum benefits allowed for women are lower than those offered to men and basic

benefit periods for women are often substantially shorter than for men in similar occupations.

These limitations on benefit amounts and benefit periods imply that women's earnings are "marginal" to their families or, worse, that women are more likely to malingering than men. Both of these assumptions are clearly false, but major differences in terms of disability insurance for women and men are still prevalent.

Further, most private disability plans do not include any coverage for pregnancy disability. As in health insurance, when pregnancy coverage is included, the costs of the plans are extremely high and the benefits limited. Such exclusionary treatment forces women to shoulder all the costs of bearing children. The industry argues that exclusion of maternity coverage is acceptable because pregnancy is a voluntary condition. But as Congress recognized when it passed the Pregnancy Disability Act in 1979, in a society that continues to place a high value on motherhood, the costs of bearing children should be shared.

One of the effects of sex discrimination in health and disability insurance which has not been closely scrutinized is the impact on business, especially small business. Employers who have a substantial number of women in their workforce, even if the workforce is not predominantly female, will pay more for group health and disability plans. Higher costs could lead employers to cut benefits for employees and could even encourage employment discrimination.

Property, Auto and Liability Insurance.—Young women generally pay less than young men for auto insurance. This practice has now been outlawed in several states and the effect on rates has been marginal.

Discrimination against women in property and liability insurance is less overt, but no less prevalent, and discriminatory practices are still commonplace. For example, women frequently have more difficulty in getting homeowners' insurance than men similarly situated. Business-related insurance, like business credit, continues to be an area where women are treated unequally. Commercial credit is often linked to adequate insurance coverage for a business and many women have experienced discrimination in applying for commercial property or liability insurance. Too often, women are prevented from starting or expanding a business because they cannot get the insurance coverage necessary for the operation of the business. When applying for business insurance, women are repeatedly faced with sex-stereotyping by individual agents and underwriters.

Life Insurance/Pensions and Annuities.—The insurance industry uses actuarial tables to set rates in life insurance and rates and benefits for pensions and annuities. Women, as a class, live six to nine years longer than men, as a class. Based on this fact, women participating in private pension or annuity programs are required to pay higher premiums for equal benefits or to receive lower monthly benefits if their premiums are equal.

In life insurance, women have a slight advantage in the rates they pay. Women's rates are generally calculated on a three-year setback from men's rates. It is interesting to note that where the increased longevity of women is an advantage, as in life insurance, most companies continue to use only a three-year setback, but where it is a disadvantage, as in pensions and annuities, the full six to nine-year differential is used. While women pay slightly less for life insurance, options routinely available to men are often denied to women. Some insurance companies will not sell a married woman more coverage than her husband owns. Guaranteed purchase options to buy additional coverage without evidence of insurability are not available equally to men and women. Waivers of premium options are often not available to women or, when offered, cost women more than they cost men. Women are sometimes discouraged from purchasing insurance over a "normal" amount, while men with the same incomes have no difficulty securing the higher amounts of insurance.

The insurance industry argues that because women live longer than men, it is necessary to use sex-based mortality tables in setting rates and benefits. They argue that differential rate structures based on sex are not unfair, because longevity differences between the sexes are biological in origin and not related to socio-economic factors.

These arguments do not hold up under close scrutiny. BPW believes that sex discrimination is wrong and should not continue to be sanctioned in any area of American life. We do not believe that there is "fair" discrimination and "unfair" discrimination. We firmly believe that the principle of equity should govern all of our activities and that no major segment of our economy should be exempt from this principle.

The parallels between race and sex discrimination are clear. Black men, as a class, have a shorter life expectancy than white men. Using the argument the industry uses to justify gender-based discrimination, black men should pay more for life

insurance and less for pensions/annuities than white men. But, the insurance industry itself says that it does not discriminate in "premium rates or in availability of coverage on the basis of race, color, religion or national origin." They say, "to do so would be contrary to both public policy and to general ethics." Supporters of eliminating discrimination believe that these same social and ethical considerations should apply to sex as a classification.

Recent court decisions have attacked the idea of treating individuals as part of a racial or sexual class. In *City of Los Angeles, Department of Water and Power v. Manhart*, the Supreme Court ruled that employer-operated pension plans which used sex-based differentials in determining rates and benefits were in violation of Title VII of the Civil Rights Act of 1964. In *Manhart*, the Court said that even a true generalization about the behavior of the class to which an individual belongs would be insufficient reason for treating the person differently because "there is no assurance that any individual woman (or man) will actually fit the generalization."

In fact, the use of sex-based classification is a distortion of the concept of the "average" man and the "average" woman. Statistically, it is only a small group of women who live longer than a small group of men. Of 100,000 males and 100,000 females retiring at age 65, 86.2 percent of the women had the same death age as 86.2 percent of the men. Thus, all women receive lesser monthly retirement benefits or pay more for equal benefits when less than 14 percent of the women actually live longer.

While the industry assumes that the differences in longevity between men and women are biological, others cite "typically male behavior patterns" which clearly contribute to earlier death ages for men. These factors, such as smoking, alcohol abuse, high stress or dangerous occupations, are now more common among women, but it is still too early to tell what effects this will have on women's longevity.

If insurance is supposed to spread risks over a participating population, the industry can certainly develop nonsex-based rates and payments to reflect the experience of the whole participating population. Insurance companies can use other variables, such as smoking, occupation, etc., which are better predictors of longevity and health, to establish rate classifications.

The overall impact of insurance discrimination on women is negative. Women who need health or disability coverage must pay more for less protection. Women must pay more or receive smaller benefits in pensions and annuities. They face discrimination in the availability of options in life insurance and differential treatment in property and business insurance.

Some have said that the elimination of sex discrimination would endanger the financial soundness of the insurance industry. This same argument was used against the Equal Pay Act, the Civil Rights Act of 1964 and the Equal Credit Opportunity Act by business and financial institutions. In retrospect, we see that the fears of employers and the banking industry were greatly exaggerated. The insurance industry can surely devise sound business practices which are not based on discrimination against half of our nation's population.

To move toward eliminating discrimination in insurance, BPW strongly supports passage of S. 2204. Federal legislation is needed to set national policy and standards. However, S. 2204 has a major weakness in that it does not include an enforcement mechanism. We therefore recommend that Sections 505-509 of Title V of the Economic Equity Act (S. 888) be incorporated into S. 2204. Under these sections, primary responsibility for enforcement falls to states. If states fail to act, individuals with complaints can bring suit in either state or federal court. No federal agency has administrative responsibility for investigation of complaints or enforcement. In limited circumstances, the Attorney General is authorized to bring a lawsuit in cases where there is an issue of "general public importance" or a pattern or practice of refusal to comply with the statute.

The debate about nondiscrimination in insurance has become very complex, and for some, emotional. But, the basic argument is a simple one—whether or not sex discrimination should be allowed in an important area of American economic life. Since the 1960's the trend has been away from judging individuals on the basis of race, color, religion, national origin or sex. Passage of S. 2204 would continue this healthy trend and assure that all Americans are able to look forward to a future of economic security and justice.

The CHAIRMAN. Thank you.

Dr. Brown?

Dr. BROWN. Mr. Chairman, my name is Quincalee Brown. I am the executive director of the American Association of University

Women, which has worked for the last 100 years for the advancement of women in education and society.

We support this proposed legislation to eliminate discrimination against insurance and pension customers on the basis of race, color, religion, sex, or national origin. Quite simply, this act represents another step toward economic and social justice. In passing the Civil Rights Act, Congress affirmed the importance of individual rights. That act forbids the treatment of individuals as if they are mere components of a racial, religious, sexual, or national grouping. The same scrutiny that you have given to employment, to housing, to credit laws must be given to the insurance practices of today. And you can do that through this act.

Outmoded statistics and generalizations about the risks that women pose are currently being used to fortify the arguments that insurance costs should be higher for women than for men. AAUW suggests that the increased costs for women may not be so great as earlier estimates after statistics on which actuarial tables are based have been brought up to date.

Other factors than sex, which reasonably have greater impact on risk, should be given full value in computing actuarial possibilities as well. Any additional costs that do accrue to women over the long term will more than offset the broader public policy determination virtually to eliminate discrimination and to afford equal protection for women in the area of pensions and insurance.

Unfortunately, women as a group are sometimes denied coverage, offered few benefits, or charged excessive rates for policies that they do receive. When purchasing coverage, men and women may be charged a different rate based on statistical experience or women may be charged higher rates based on no experience at all.

Such practices do not occur in isolation but are pervasive throughout the industry and in all the various forms of insurance. When purchasing health insurance women, like most customers, seek protection against the high cost of medical care. Unlike most customers, however, insurance coverage is unavailable or inadequate for one of our most basic medical needs, motherhood. As a result of discriminatory practices, women find themselves bearing the full costs of reproduction for society, a curious treatment by an industry whose primary function is to spread costs evenly.

Under disability insurance, as with health, working women are unable to purchase adequate protection against the disabling effects of maternity. These same insurance companies, however, routinely provide coverage for male-specific risks such as vasectomies and prostatectomies, as well as other voluntary conditions, including sports injuries, cosmetic surgery, and even hair transplants.

These inequities are not confined to maternity benefits. Indeed, they pose an all too familiar barrier against women seeking income security in all forms of disability coverage.

The CHAIRMAN. You can get hair transplants under health insurance?

Dr. BROWN. That is what I hear. Some, not all. But not motherhood.

In purchasing pension benefits, women face the most explicit form of discrimination. Under defined contribution pension plans, sex-based tables are often used to compute the amount of monthly

annuity. Even though a man and a woman are the same age and have the same amount of money in their pension accounts, the woman will receive a smaller monthly annuity because, theoretically, her total amount will have to be spread over a longer period of time. Thus penalized for their longevity, all women receive lesser monthly retirement benefits than men regardless of their individual life expectancies.

To sanction the inequities of current insurance practices is to relegate women to inferior economic and legal status. The Labor Department now estimates that by 1990 approximately 95 percent of America's women will be in the paid labor market. Surely our insurance companies are aware of the great potential that offers them.

In considering passage of the proposed Fair Insurance Practices Act, this committee is showing leadership and foresight. This bill forms no new agency; it promulgates no new rule. Rather, it incorporates and adapts a piece of our constitutional wisdom that says that each individual deserves fair and equal treatment. Women—working, mothering, saving, and investing—have a right and a responsibility to secure their financial futures through the purchase of pensions and insurance, fairly and equitably offered.

Thank you.

[The statement follows:]

STATEMENT OF DR. QUINCALEE BROWN, EXECUTIVE DIRECTOR, AMERICAN ASSOCIATION OF UNIVERSITY WOMEN

I am Dr. Quincalee Brown, executive director of the American Association of University Women, a national organization with over 190,000 members. We are proud of our 100-year commitment to equality and human rights. In this spirit, we strongly urge passage of The Fair Insurance Practices Act, S. 2204.

AN ISSUE OF FAIRNESS

The American Association of University Women supports this proposed legislation to eliminate discrimination against insurance and pension customers on the basis of race, color, religion, sex, or national origin. Quite simply, The Fair Insurance Practices Act represents another step toward economic and social justice.

Time and again Congress has addressed the fundamental question of fairness to individuals affected by discriminatory classifications. In passing the Civil Rights Act of 1964, Congress affirmed the importance of individual rights. That Act forbids the treatment of individuals as if they are mere components of a racial, religious, sexual, or national grouping. This basic principle, that individuals deserve fair, unbiased treatment, is the cornerstone of our democracy and the essence of our freedom. The same thoughtful scrutiny that you have given to employment, housing and credit laws must be given to the insurance practices of today. This you can do through The Fair Insurance Practices Act of 1982.

Outmoded statistics and generalizations about the risks that women pose are currently being used to fortify arguments that insurance costs should be higher for women than for men. AAUW suggests that the increased cost for women may not be so great as earlier estimates, after statistics on which actuarial tables are based have been brought up to date. Other factors than sex, which reasonably have greater impact on risk, should be given full value in computing actuarial probabilities as well. Any additional costs that do accrue to women over the long term will be more than offset by the broader public policy determination virtually to eliminate discrimination and afford equal protection for women in the area of insurance and pensions.

WOMEN WORKING FOR SECURITY

Today, women are entering the work force at a rate of almost 2 million each year. Over 50 percent of all women are employed or are currently seeking jobs. Who are these working women?

- 53 percent are mothers with children of school age or younger,
- 56 percent are married with husband present,
- 27 percent of those have husbands who earn less than \$13,000 a year,
- 25 percent are never married, and another,
- 20 percent are widowed, separated, or divorced,
- 14 percent of of all families, or one in every 7, are headed by women.

The economic realities of today demand that women work to support their families; not for surplus second incomes, but to help break even in the race against inflation. These women, like men, are dependent on fringe benefits to buffer their paychecks against rising costs. Insurance is an absolute necessity to help workers hedge against troubled times and to see their families through periods of income loss due to accident, illness, and death. Yet women who are already confronted with such financial barriers as earning 59 cents for every dollar earned by men, are further penalized because of their sex and are continuously denied the right to a secure and insured tomorrow.

DENIAL OF EQUAL PROTECTION

The business of insurance is, in part, the business of classification. Inherent in the process of spreading losses is the practice of grouping individuals according to the risk they pose. The coverage available, the types of benefits offered, and the rates charged will depend on how the insurance company chooses to categorize an individual.

Unfortunately, women, as a group, are sometimes denied coverage, offered few benefits, or charged excessive rates for the policies they receive. For example, women who work in the home as hired domestic employees are unable to purchase disability insurance, while such insurance is available to men with identical jobs and risk factors. The prevalence of such discrimination is not denied by the industry; rather, it is justified as a time-honored practice. Women, however, are waking up to the need for change in an industry which, for too long, has denied us equal protection.

Women consistently find themselves paying for insurance in more ways than one: some companies refuse to make insurance available to women with the same provisions as they offer men, some other companies withhold the product from women altogether. When purchasing coverage, men and women may be charged a different rate based on statistical experience, or women may be charged higher rates based on no experience at all. Such practices do not occur in isolation, but are pervasive throughout the industry and in all forms of insurance.

Health Insurance.—In purchasing health insurance, women, like most customers, seek protection against the high cost of medical care. Unlike most customers, however, insurance coverage is unavailable or inadequate for one of our most basic medical needs: motherhood.

Over half of the new health policies exclude maternity altogether; the minority of plans that do provide coverage meet less than half the actual costs, and the maternity insurance rates applied by many companies are both obsolete and blind to inflation. As a result of discriminatory practices, women find themselves bearing the full costs of reproduction for society—curious treatment by an industry whose primary function is to spread costs fairly.

Disability Insurance.—Under disability insurance, as with health insurance, working women are unable to purchase adequate protection against the disabling effects of maternity. Pointing to the so-called voluntary and predictable nature of pregnancy (and related conditions such as miscarriage), some insurance companies rationalize such discriminatory treatment of women. These same companies, however, routinely provide coverage for male-specific risks, such as vasectomies and prostatectomies, as well as other voluntary conditions, including sports injuries, cosmetic surgery, and hair transplants.

These inequities are not confined to maternity benefits: indeed, they pose an all-too-familiar barrier against women seeking income security in all forms of disability coverage.

For some women the more fundamental obstacle is total exclusion from disability coverage. They are the part-time employees working without the fringe benefits and protections attached to full-time salaried positions. They are the waitresses and the domestic aides, whose male counterparts often enjoy disability coverage while they

do not. Most importantly, they are the homemakers, working without wages, yet providing the valuable services of child care, housecleaning, and cooking—services which would cost more than \$17,000 to replace.

Pension Benefits.—In purchasing pension benefits, women face the most explicit form of discrimination. On the grounds that women as a group live longer than men, pension companies compute rates and benefits almost exclusively on the basis of sex. Under defined contribution pension plans, sex-based tables are often used to compute the amount of monthly annuity. Even though a man and a woman are the same age and have the same amount of money in their pension accounts, the woman will receive a smaller monthly annuity because, theoretically, her total amount will have to be spread over a longer period of time. Thus penalized for their longevity, all women receive lesser monthly retirement benefits than men regardless of their individual life expectancies. In recent court decisions, such generalizations have been persuasively challenged, in terms of both statistical and legal merit: a 1978 Supreme Court decision, citing Title VII, squarely rejected differential treatment under employer-operated pension plans. Private insurers offering other policies, however, remain outside the scope of the decision and can freely rely on classifications based on sex.

Few satisfactory explanations are offered for these inherently unfair practices: the singling out of pregnancy as an uninsurable condition, the arbitrary classification of women as higher disability risks, and the disproportionate and discriminatory emphasis on sex as the sole determinant of life expectancy. The pattern that emerges is not one of equity for customers, but of convenience for insurers, who find it easier and cheaper to apply broad sex-based standards. Such standards, however, are often based on outmoded assumptions and inappropriate generalizations about the value of a woman's work and her need for financial security.

A TIME FOR CHANGE

To sanction the inequities of current insurance practices is to relegate women to inferior economic and legal status. For you as policy makers to overlook the changing demographics in the home and on the job is to perpetuate the myth of the dependent female. For you to continue to allow the exclusion of women from a growing industry is, quite frankly, to ignore good business sense. The Labor Department now estimates that by 1990, 95 percent of America's women will be in the paid labor market. Surely our insurance companies are aware of the great potential that offers them.

To date, piecemeal efforts have been made to eliminate discrimination in pension and insurance practices. Model regulations, proposed by the National Association of Insurance Commissioners, have been adopted in whole or in part by several states. Unfortunately, these bandaid solutions have done little to alleviate what remains a glaring gap in our record of civil rights achievements.

In considering passage of the proposed Fair Insurance Practices Act, this distinguished Committee is showing leadership and foresight. This bill forms no new agency; it promulgates no new rule. Rather, it incorporates and adapts a piece of our Constitutional wisdom that says each individual deserves fair and equal treatment. Women—working, mothering, saving, and investing—have a right and a responsibility to secure their financial futures through the purchase of pensions and insurance, fairly and equitably offered.

The CHAIRMAN. Thank you.

Let us take Ms. Wernick and then I will have some questions for the panel.

Ms. WERNICK. Mr. Chairman, I am Ellen Wernick and I am presenting this testimony on behalf of the Coalition of Labor Union Women, CLUW, and its president, Joyce Miller, and the 7 million women who belong to labor organizations in this country. CLUW is a national organization of trade unionists concerned with eliminating discriminatory practices from our workplaces, our communities, and our society.

We strongly support S. 2204 and urge its prompt enactment by the Senate. We wholeheartedly favor the extension of civil rights guarantees to the insurance industry, prohibiting discrimination by that industry on the basis of sex, color, race, religion, or national

origin. Such discrimination is counter to the public policy of this Nation, as evidenced by legislation outlawing discrimination in employment, education, housing, and credit.

Discrimination is pervasive in the insurance industry. Blacks are heavily discriminated against in property, accident, casualty, and health insurance. But I would like to address the issue of discrimination on the basis of sex and its impact on working women and their families. Insurance is an absolute necessity to help workers hedge against troubled times and to see their families through loss of income due to accident, illness, and death.

Better than 52 percent of the women in this country are in the labor force; 51 percent of married women living with their husbands are working or looking for work. The remaining 45 percent of the female labor force are women who are divorced, separated, never married, or widowed—many with children to support.

The economic security of American families today is dependent on the contributions of working women, those working in the home as well as those employed outside the home. The services a homemaker performs would cost more than \$17,000 a year to replace. Employed wives contribute more than a quarter of the average family's income, more than 40 percent if she works full time outside the home.

Yet women and their families are denied basic insulation from the loss of their contributions because of the widespread discrimination in the insurance industry. Some of the discrimination results from outdated assumptions and stereotypes—that women's work is a mere diversion, that a family needs only one income, that a woman's financial security is provided by a husband. Other discriminatory practices result from the use of gender-based actuarial tables to determine rates and benefits in life, health, and disability insurance, and pensions and annuities.

Under title VII of the Civil Rights Act of 1964, the use of such tables is slowly being outlawed in employment-related plans. Most defined benefit pension plans and group insurance plans available to workers as part of a fringe benefits package are now therefore gender neutral. Many of these plans are operated by insurance companies. Yet, until the protections contained in S. 2204 become law these companies and their competitors are able to use the same gender-based criteria which are illegal in employment-related plans to set the rates and benefits for insurance and annuity contracts which are purchased privately. The impact of this is especially severe on women.

To begin with, women are concentrated in job classifications such as homemaking, domestic, clerical, retail, and service work, which are rarely accompanied by insurance benefit plans. Women also are more likely to work at uninsured part-time jobs.

Many women are denied any disability income coverage, and others are subject to differential waiting periods and limited benefits. When women buy life insurance, they are often denied options routinely available for men. Some companies will not sell a married woman a greater amount of coverage than her husband owns.

Until passage of the Pregnancy Discrimination Act, amending title VII, pregnancy costs were traditionally excluded from health and disability plans. They still are under most individual plans.

And even when maternity benefits are provided, they are extremely low.

Rates for health insurance are substantially higher for women, even though claims for accident coverage are actually greater for men.

Prohibiting discrimination in the privately purchased insurance policy market is a must. No industry in the United States has a right to discriminate against an individual because of sex. If the purpose of insurance is to spread risks over a participating population, the insurance industry can certainly develop gender-neutral rates and benefits which reflect the experience of the whole participating population and make their products available equitably to that population.

Mr. Chairman, thank you.

[The statement follows:]

STATEMENT OF ELLEN WERNICK ON BEHALF OF THE COALITION OF LABOR UNION
WOMEN

Mr. Chairman, I am Ellen Wernick. I am presenting this testimony on behalf of the 16,000 members of the Coalition of Labor Union Women (CLUW), and its president, Joyce Miller. CLUW is a national organization of trade unionists concerned with eliminating discriminatory practices from our workplaces, our communities, and our society. We strongly support S. 2204 and urge its prompt enactment by the Senate. We wholeheartedly favor the extension of civil rights guarantees to the insurance industry, prohibiting discrimination by that industry on the basis of race, color, religion, sex or national origin.

Such discrimination is counter to the public policy of this nation, as evidenced by legislation outlawing discrimination in employment, education, housing, credit, and voting.

Discrimination is pervasive in the insurance industry. Blacks are heavily discriminated against in property, accident, casualty, and health insurance. But I would like to address the issue if discrimination on the basis of sex and its impact on working women and their families. Insurance is an absolute necessity to help workers hedge against troubled times and to see their families through loss of income due to accident, illness, and death.

Better than 52 percent of the women in this country are in the labor force. Fifty-one percent of married women living with their husbands are working or looking for work. The remaining forty-five percent of the female labor force are women who are divorced, separated, never married, or widowed—many with children to support.

The economic security of American families today is dependent on the contributions of working women—those working in the home as well as those employed outside the home. The services a homemaker performs would cost more than \$17,000 to replace. Employed wives contribute more than a quarter of the average family's income—more than 40 percent if she works full-time outside the home.

Yet women and their families are denied basic insulation from the loss of their contributions because of the widespread discrimination in the insurance industry. Some of the discrimination results from out-dated assumptions and stereotypes—that women's work is a mere diversion, that a family needs only one income, that woman's financial security is provided by a husband. Other discriminatory practices result from the use of gender-based actuarial tables to determine rates and benefits in life, health, and disability insurance, and pensions and annuities.

Under Title VII of the Civil Rights Act of 1964, the use of such tables is being outlawed in employment-related plans. Most defined benefit pension plans and group insurance plans available to workers as part of a fringe benefits package are now therefore gender-neutral (including the plans of most of the large corporations and the Federal Government's Civil Service Retirement and employee insurance plans). Many of these plans are operated by insurance companies. Yet until the protections contained in S. 2204 become law, these companies and their competitors are able to use the same gender-based criteria which are illegal in employment-related plans to set the rates and benefits for insurance and annuity contracts which are purchased privately. The impact of this legal loophole is especially severe on women.

To begin with, employment related insurance is less available to women than to men. Women are concentrated in job classifications such as homemaking, domestic, clerical, retail and service work which are rarely accompanied by insurance benefits plans. Women also are more likely to work at uninsured part-time jobs and less likely to be promoted to positions which offer insurance benefits.

Disability income insurance is rarely ever available to women whose jobs are performed in a home, while such insurance is available to men with identical job and risk factors. Disability insurance is rarely available to part-time workers, 70 percent of whom are women. For women who are covered by disability insurance, they are usually charged higher premiums than men carrying identical or better insurance, they must wait longer before benefits are payable, the maximum time for which benefits may be paid is shorter, and their monthly benefits are subject to lower maximum levels.

When women buy life insurance they are often denied options routinely available to men. Some companies will not sell a married woman a greater amount of coverage than her husband owns. Guaranteed purchase options to buy additional coverage without evidence of insurability are not available equally to men and women, or, when offered, cost women more. Women are sometimes discouraged from purchasing insurance over a "normal" amount while men with the same incomes have no difficulty securing the higher amount of insurance.

Under life insurance coverage, where the increased longevity of women is an advantage, rates are generally calculated not on sex-segregated tables, but on a 3-year set back from men's rates. Where that longevity is a disadvantage, as in pensions and annuities, the separate tables appear and the full 6-9 years differential is used.

Health insurance coverage may not be available for prenatal and post partum care, family planning and gynecological disorders and related conditions. Until passage of the Pregnancy Discrimination Act, amending Title VII, pregnancy costs were traditionally excluded from health and disability plans. In individual health and disability plans this is still usually the case, and even when maternity benefits are provided, they are extremely low.

Rates for health insurance are substantially higher for women even though claims for accident coverage are actually greater for men.

The availability, cost, and benefits of these types of insurance for women reflect a blatant disregard for the financial contributions of women—for the security of their families and for themselves. The insurance industry argues that they must as a matter of sound business practice classify by sex. They survived the elimination of race as a classifying factor and they can survive the elimination of sex as a classifying factor. No industry in the United States has the right to discriminate against an individual because of sex.

Prohibiting discrimination in the privately purchased insurance policy market is a must, if the full effect is to be given to the outlawing of race and sex discrimination in employment under Title VII of the Civil Rights Act. Many employers simply do not provide insurance or pension fringe benefits, and their workers are left to allocate a portion of their income to the purchase of such insurance in the private market. Moreover, companies with fewer than 15 employees are exempt from the coverage of Title VII. Such fortuities should not relegate a woman worker in one office to paying more in the private market for an annuity than her male coworkers, while down the street, male and female coworkers have identical amounts deducted by their employer from their paychecks to cover an annuity of the same size. Nor should the women worker purchasing her own annuity find none available at all on the private market. Similarly, her male colleague should not be subject to far higher premiums for life insurance than she must pay.

If the purpose of insurance is to spread risks over a participating population, the insurance industry can certainly develop gender-neutral rates and benefits to reflect the experience of the whole participating population, and which are not based on discrimination against half of the U.S. population.

Thank you.

The CHAIRMAN. You made reference to the fact that most Federal plans are gender neutral. It is interesting. I asked the Office of Personnel to come and testify, not for or against the bill, just about the operation of the plan and did they have any difficulties with managing one on a gender-neutral basis, and they were prohibited by the administration from coming to testify. I was not even asking them to take a position on the bill, just how does their plan operate.

You know, as you were talking I again realized how far we have come. When I started practicing law, in addition to a bit of trial, I did mostly labor negotiating for employers. One of the groups I negotiated for were the food employers, the supermarkets in the Portland area. At the time I started negotiating, we had differential pay for men and women as checkers doing exactly the same work. That was not comparable work; this was identical work. The men got in those days about a 10 or 15 cents differential an hour on the theory that they simply were doing things women could not do.

Interestingly, the union accepted the differential. They were the ones who bargained for it, and women had not reached a sufficient identity yet that even the women in the union would harass the union business agent about that. That did not happen until starting into the 1960's. But there it was and everybody accepted it.

So we have come a long way. We have a long way to go, but we have come a long way.

Ms. WERNICK. So has the labor movement since they are taking the lead in the comparable worth fight. I think that shows how much things have changed.

The CHAIRMAN. Let me ask all of you this question of individuals versus groups. Professor Laycock referred to it initially. He said we do make some exceptions. I should have quizzed him a bit about, are those justifiable exceptions, the affirmative action programs where we are saying that henceforth 22 percent of your employees are going to have to be women as a group collectively classified. Is that a wise policy? Or blacks, or whatever. Or is that an unwise policy, or is that a temporary bridge to equality that we should really not adopt as a long-term policy, but it is a necessity to eliminate past discrimination quickly.

We can just start from the left and go across. Or even the Democratic National Committee's policy that half the delegates have to be women at the national convention. Are those wise or unwise policies?

Ms. MELICH. We think that affirmative action is a wise policy and we support it. We think it addresses past wrongs.

The CHAIRMAN. Even when in that case we classify people by groups and we classify women as a group and say that in that case it is all right to consider them as a group rather than as individuals?

Ms. MELICH. Which is in reaction to an original classification that was unfair.

The CHAIRMAN. Dr. Gray?

Dr. GRAY. Well, in the first place, while certainly I would support the concept of affirmative action and the concept of hiring goals, particularly when an employer has been found to have had discriminatory practices, it really is not quite the same. Because even if you set a hiring goal and say we are aiming toward 20 percent women in the work force, you want those women whom you are going to hire to be qualified for their positions, just as you expect the men to be qualified for the positions.

So you are not choosing them for these jobs solely because they are women. You insist that they meet the standards. Sex may be a plus under affirmative action plans or race may be a plus under

affirmative action plans, but we are not proposing you hire unqualified people solely on the basis of race and sex.

Now, what insurance classifications do is say that it does not matter what the rest of your characteristics are. A woman could smoke like a chimney and probably have a life expectancy of very few years and weigh 350 pounds and have all other sorts of characteristics, and still her life expectancy would be computed on the basis of the average woman's life expectancy.

So you are looking at sex solely and that is what makes the difference. Now, it certainly is true, as Professor Laycock said, that many of the opponents of affirmative action goals and quotas also oppose this bill, and one finds it difficult not to attribute it to a basic bias against women. There may be some other explanation, but while there are other similar concepts in insurance, namely you make a classification and you seek group equality, it really is not the same thing.

So I have no problem in my mind supporting hiring goals and also supporting the notion of individual rights being protected under the insurance laws.

The CHAIRMAN. You say hiring goals and you do not call them quotas. If instead of goals you simply said you cannot discriminate, but we are not going to say that you have to as a group make sure your goal is, next year in the building trades that you are going to have, in the old Philadelphia plan days, 5 percent women by next year and 8 percent and 12 percent and 15 percent in the years after, those sound very close to quotas. And I have a difficult time intellectually distinguishing.

Ms. GRAY. I do not have a problem distinguishing between a goal as something desirable that you are going to work for, and also that gives you a yardstick against which you can measure your progress. A quota to me has always been the other way around.

For example, we are only going to let 10 percent of this organization be women, or we will only let a few Jewish people in, or we are only going to let a few black people in. A quota somehow tops stuff up rather than being something toward which you are moving. So I think that is part of the objection to the use of the word "quota."

But I think goals as a planning device, particularly for employers who have not been meeting their obligations in the past and have clearly been discriminating, I think this is something that allows them to measure their progress. And I would certainly think that goals are a desirable thing and should be retained. I do not look at that as a group classification.

The CHAIRMAN. You know, it is interesting, though. You say quotas—and you are right—they used to be a way of keeping people down: We are only going to allow 5 percent admission of Jews to the medical school, because if they were admitted on merit the class would be 25 percent Jewish because they are just smarter than the rest of the people, but only 5 percent would be let in. It was a discrimination and an unfair one. That marvelous book "Gentlemen's Agreement" was great reading.

Now we go to the affirmative action. We say henceforth 22 percent of that admission class next year is going to be women and 14 percent is going to be black. Ironically, it will be the Jews who will

be discriminated against again, because the places they would otherwise get by merit they are going to lose to others who on a competitive basis would not be able to keep up with them.

Dr. GRAY. What about the Jewish women? Fifty percent of the Jews are women.

The CHAIRMAN. I understand that. I understand that.

Dr. GRAY. So I think frequently we do not hear from them as often, perhaps, but that is the first thing we have to remember. That is my first answer.

The second answer is, quotas have worked against women as well. For example, many academic high schools in some cities and also many colleges and universities used to have a quota on how many women they would take, because if you looked only at test scores and high school averages you would be admitting more women than they wanted or more women than men.

This is a problem in many countries. Someone was telling me about a problem in Taiwan: If they go solely on scores 87 percent of the university would be women. How good that study is I do not know.

The point is, women seem to be discriminated against no matter how you fix things, whether it is insurance or whether it is admissions or whether it is this or whether it is that. So I think you want to judge people on merit, certainly.

I think if you judge people on merit women have absolutely no problem competing in the marketplace. I am completely confident of that. But I think you do need hiring goals to encourage employers to judge solely on merit, because I do not think we have gotten to the stage yet where employers are judging solely on merit.

People act as if that had totally been solved and now we are trying to move beyond that by establishing quotas. That is just not true. Most employers are not.

The CHAIRMAN. I can see the other three panelists are itching to say something. Go ahead.

Ms. SCHUB. The first thing, we do support affirmative action, and we do know that there has been discrimination in all areas of American life. It is only in 10 years that we have made significant progress. There was a great deal of sex discrimination in education, particularly at the graduate level, up to 10 years ago.

There has always been affirmative action, but it has always been for white men. They have always had a preference. So in order to remedy past discrimination, we do think you need goals. And I think the whole discussion has gotten shifted, because we are all talking about quotas and yet nobody is imposing quotas.

The issue is whether one has to strongly encourage employers to be sex blind, and we do know that we do. We are hearing every day now of real cases of employment discrimination. It is not imaginary. It still happens out there.

The CHAIRMAN. It still happens here on the Hill.

Ms. SCHUB. That is right. So you do need a system that encourages employers. Maybe 25 years or maybe 5 years from now we will not need it. But that would be—I am being very optimistic. It would be nice to say we do not need this any more, we do not need those legal protections, because we are being considered in the marketplace like everybody else and we are being taken on our

merit or lack of merit. But as everybody knows, that is just not the case now.

Ms. WERNICK. I think the fact that we have S. 2204 before us, and the question you had asked earlier in terms of the industry's admittance to discriminating by sex indicates that we certainly need legislation. We needed it in employment, as evident by title VII. We would be even worse off in insurance if we did not have title VII.

Dr. BROWN. I have to echo the strong sentiment toward what the other members of the panel have said. You asked earlier this morning, why did they happen to choose male and female when there could be so many other classifications that were selected? I know that you are familiar with the history of discrimination and how insidious it becomes in a culture.

And even though I wish Judy were correct, in that in 5 years we might see women in their reasonable place in the work force, I think we have a much longer row to hoe than that, unfortunately. If it were true that women were hired and considered on merit alone, I would say 40 percent of all job classifications would approximate women just as 40 percent of the work force approximates women, and we all know that is not true or you would not have your 59 cents to the dollar that we are still seeing today.

We certainly support the kinds of goals that have been discussed here this morning, and I think that they are going to continue to be essential until the past effects of discrimination are overcome.

The CHAIRMAN. Let me ask you a specific one. I ask it because of my concern for my party, which I find is going to doom itself to extinction if it keeps going the way it is going in terms of minorities and women. But I am torn about this quota business. Let me ask you about the Democratic National Committee and their quota that 50 percent of the delegates must be women. That is not merit one way or the other. That is just automatic. Fifty percent have to be women. Is that a wise policy?

Dr. BROWN. I think it is a wise policy. In the first place, I think you will discover that merit is an irrelevant issue.

The CHAIRMAN. In the selection of delegates, yes, you are probably right. Men or women.

Dr. BROWN. We certainly know from looking at test scores, if you even remove names and make applications sex neutral, half of or perhaps better than half of the people who are hired for positions, who are selected for contests in writing, things of that nature, are always women. But if the names are there, there is some kind of sex designation.

The CHAIRMAN. Well, you know where I can see that. Every year in late May and June I do half a dozen high school commencement speeches, and before I get to speak you have to sit through the awards for the best musician, and the valedictorian. They are about 80 percent women, I would say, in the high schools. The arguments are they mature faster. I do not know what the arguments are. All I am saying is, my very inaccurate polling would be that 80 percent of the award winners for best writer, best actor, valedictorian, student body president or whatever are women in the high schools.

Dr. GRAY. I would like to say that, while I would prefer that we could get 50 percent of the convention delegates to be women without establishing a quota, I would be much happier if there were also 50 percent of the delegates in the Republican Party, with or without a quota. But I have to say that the Democratic Party's record on issues of concern to women has been better as a whole than the Republican Party. Certainly there are exceptions among Democrats who are no friend of women, and there are exceptions among the Republicans. But as a general—

The CHAIRMAN. A generalized classification.

Dr. GRAY. That is correct, on the average. And whether it is because 50 percent of the convention delegates are women or due to something else, I do not know. But in point of fact, it has worked. In defense of that, that has to be said, even though we would prefer to do it without a quota.

Ms. WERNICK. I think we need to remember that the quota was a self-imposed quota. It did not come from the Federal Government or anywhere else.

The CHAIRMAN. It is a private organization and the Supreme Court has upheld that many times. They can select their delegates any way they want. It is private, and in that sense it has no government intrusion in it, in its process.

Ms. SCHUB. We will not need the quotas in the parties when there are 50 percent women in the House and the Senate and the State legislatures. But we are terribly underrepresented now.

The CHAIRMAN. My hunch would be—again, I cannot speak as well for the Democratic Party. I am not that familiar with its internal workings. I would not stick with that quota very long, because in my experience about 90 percent of the work is done by women in politics. Now, with the opening up, I have a feeling you are going to be 60 or 70 percent of the delegates at the convention before long, because the process has become opened.

Are there any other comments?

[No response.]

The CHAIRMAN. If not, thank you. It has been a very, very exciting panel. I appreciate it.

Next we will take panel No. 2, Ms. Althea Simmons, Mr. James Hacking, Ms. Isabelle Pinzler, and Ms. Bella Ross.

Good morning.

Ms. Simmons, go ahead.

STATEMENTS OF ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE; JAMES M. HACKING, ASSISTANT LEGISLATIVE COUNSEL, AMERICAN ASSOCIATION OF RETIRED PERSONS; ISABELLE KATZ PINZLER, AMERICAN CIVIL LIBERTIES UNION FOUNDATION, WOMEN'S ARTS PROJECT; AND BELLA ROSS, PRESIDENT, CAPITAL COMMITTEE, NATIONAL COUNCIL OF JEWISH WOMEN

Ms. SIMMONS. Mr. Chairman, I am Althea T. L. Simmons, director of the Washington Bureau, NAACP. We certainly appreciate the opportunity to appear before this committee in support of S.

2204. As a matter of fact, we supported similar legislation on the House side, H.R. 100.

It has been interesting sitting and listening to the testimony, Mr. Chairman, because notwithstanding the assurances of the insurance industry and others who have testified this morning, those of us in the black community know that racial discrimination in insurance still exists. The black community still suffers from what we call "territorial classifications." If you live in a racial ghetto, you have difficulty getting insurance.

If you are lucky enough to get insurance, you have difficulty paying for it. As a matter of fact, redlining is not confined to homeowner's insurance only; it applies equally to other types of insurance such as automobile insurance and business risk insurance.

There are still occupational categories, both for underwriting and rating purposes which operate to the disadvantage of minorities. Unskilled manual laborers are considered by many insurance companies as high risk for automobile insurance.

I recall, Mr. Chairman, just about 7 or 8 years ago when I was a national training director for NAACP and we had some mobile training vans, we could not get automobile insurance from companies in New York State. We had to go into an assigned risk pool. They said we were too great a risk for automobile insurance.

The 1979 multistate report of advisory committees to the U.S. Commission on Civil Rights on "Insurance Redlining: Fact, not Fiction," described some of the methods that are used to cover up discriminatory practices. I would strongly urge this committee as it moves down the road in hearings and considers this legislation to strongly consider the possibility of including some administrative enforcement remedies because we believe there is a need for enforcement on an administrative level, as well as at the judicial level, since many persons who are discriminated against do not have the finances to go into court.

We certainly are pleased that you are moving in this direction to try to get nondiscrimination in insurance where it affects all persons.

Thank you so much for the opportunity to testify.
[The statement follows:]

STATEMENT OF ALTHEA T. L. SIMMONS, DIRECTOR, WASHINGTON BUREAU, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE

Mr. Chairman, and members of this committee, I am Althea T. L. Simmons, director of the Washington bureau of the NAACP, the nation's oldest and largest civil rights organization, now in its 74th year, with one half of one million members in 1800 branches and youth and college units in the 50 states and the District of Columbia.

From its inception, the mission of the NAACP has been to achieve an open and integrated America—to tear from the seams of the American social fabric the discrimination which today continues to plague our great society. Because the association has as its objective the elimination of discrimination from all aspects of American life, we are pleased to voice our support for S. 2204, the fair practices in insurance act, a companion to H.R. 100, a bill designed to fight against the rampant discrimination that exists in the insurance industry. The association will join the sponsors of S. 2204 in a common effort to secure Senate passage of this measure.

Discrimination in the insurance industry and by lenders has long been identified as a key factor in the maintenance of two separate and unequal Americas—one black and one white. See, e.g., U.S. Commission on Civil Rights, Equal Opportunity in suburbia 22-23 (1974). See Also, U.S. Commission on civil rights, Discrimination

against minorities and women in pensions and health, life and disability insurance 1241 (1978) where the chairman of the Senate subcommittee on citizens and shareholders rights and remedies made the following observations to the chairman of the U.S. Commission on Civil Rights:

"In addition, American citizens who are members of racial and ethnic minorities frequently suffer more than other consumers from territorial classifications because they live in urban areas negatively targeted by the insurance industry.

"Further, occupational categories—both for underwriting and rating purposes—often operate to the particular disadvantage of minority groups. For example, some insurance companies consider unskilled manual laborers high risks for auto insurance, despite the lack of objective data showing that consumers practicing occupations in these categories have greater losses."

"Territorial classifications" or redlining, indeed has had an adverse effect on blacks and other minorities in the enjoyment of property ownership, health services and economic security. The selective exclusion of blacks and others from insurance eligibility has been a long standing problem which the industry has failed adequately to address. Testifying before the civil rights commission, Herbert S. Deneberg, former insurance commissioner of the state of Pennsylvania observed:

"Anybody who knows anything about [insurance] can tell you that people in center cities can't get the auto insurance and the homeowner's insurance they need and want. Often they can't get it at reasonable prices." p. 4.

A recently published book on the bleak outlook for minority group children, small futures, by Richard H. Delone, contains the following relevant quotation on redlining:

"Even if mortgage money is technically available, inner city families have trouble getting owners insurance, which is often required to get a mortgage." p. 11

The footnote used to support this quotation is interesting:

"On insurance redlining and inadequacy of government attempts to compensate for it, see *Homeworker's Insurance in Detroit: A study of redlining practices and discriminatory rates*, a study prepared by the office of Detroit city council president, Carl Levin, in 1976, mimeo, undated." p. 212

City council president Levin, as we are all aware, is now Senator Levin representing the State of Michigan. When Senator Levin was Detroit city council president, his office conducted a study of redlining practices. The Senator's expertise and experience on this subject are well known. We hope this committee will avail itself of that expertise and experience in the course of committee consideration of this bill.

We also hope the committee will study the extensive testimony on insurance redlining presented over the past seven years to the House and Senate Judiciary Committees on H.R. 5200 and S. 506 and predecessor bills, to amend the Fair Housing Law. This testimony shows that insurance redlining has been and continues to be a major obstacle to the obtaining of decent housing by blacks.

It may be asked why, if pending fair housing legislation will apply to this practice, it is necessary to pass H.R. 100. The answer is twofold:

1. The fair housing legislation is still pending and real estate and insurance lobbies have mounted an effort to have the insurance industry exempted from coverage, so there is no assurance this will be kept in the pending bills;

2. The Fair Housing Act is a comprehensive housing law which prohibits all discrimination in housing and housing lending on account of race, color, sex, religion, or national origin. While the act specifically prohibits "Racial Redlining", *Lanjman v. Oakley Building & Loan*, 408F. Supp. 389 (N.D. Ohio 1975); *Harrison v. Heinzeroth Mortgage Company*, 430F. Supp. (N.D. Ohio 1977). *United States v. American Institute of Real Estate Appraisers*, 442 F. Supp. 1072 (N.D. Ill. 1977), aff'd on other grounds, 590F. 2d 242 (7th Cir. 1978) and P.H.E.O.H. Rptr. Para. 15, 306 (N.D. Ill. 1979), it has as its primary goal the encouragement and preservation of racially integrated residential patterns, *Trafficante v. Metropolitan Life Ins. Co.*, 405 U.S. 401 (1972); *Gladstone Realtors v. Village of Bellwood*, 441 U.S. 91 (1979). The act reaches only the housing industry. Redlining is not, however, confined to homeowner's insurance. It applies equally to other types of insurance, such as auto and business risk insurances. The Fair Housing Act does not cover these types of insurance, and therefore, we need 2204 to reach the entire insurance industry.

As noted by Congressman John Dingell when he introduced H.R. 100, the House companion to S. 2204, insurance discrimination, though widespread, is much more subtle than in previous years. A multi-state report of advisory committees to the United States Commission on Civil Rights (insurance redlining: fact not fiction, February, 1979, pp. 4-5) described some of the methods used to cover up discriminatory practices. Some, not all, are as follows:

Placing agents selectively in order to reduce the opportunity to secure business in certain areas;

Refusing, limiting, or varying insurance availability due to subjective evaluations by agents or by inspectors that certain areas are "deteriorating" or "changing;"

Refusing, limiting, or varying insurance availability due to subjective perceptions of "adverse factors" such as the race or sex of an applicant or the racial composition of the geographic area in which the risk is located;

Requiring inspections in certain locations within a state but not within other locations;

Pricing insurance at such high levels that for all practical purposes it is unavailable;

Varying underwriting practices solely by zip code.

The report of these advisory committees cited data from the National Advisory Panel on Insurance which showed that 30 percent of residents and 40 percent of businessmen in poverty areas of six cities had serious insurance problems; 15 percent of the homeowners and 14 percent of businessmen said they had less insurance than they wanted.

Also worth calling to the attention of this committee is a situation which other witnesses may not touch on. It is the understanding of the NAACP that insurance issued by fraternal organizations may be limited to its members, even if the organization has discriminatory membership policies. We trust that this committee will adopt provisions in S. 2204 that will prevent this escape clause from being used as a subterfuge to cover discrimination. We suspect that this does occur. Some time ago a Trailway bus driver advised us that he could not get travel insurance from the Order of United Commercial Travellers of America of Columbus, Ohio, although his co-employees who were white could. Our inquiry to the company brought the response that it issued insurance to any male citizen of the United States, Canada or British possessions in North America who was accepted for membership in the order. Membership was limited to those who had two sponsors who were members of the order and who were approved by an investigation committee.

We suspect that this is not a bona fide fraternal organization and that it uses the sponsorship and screening techniques as a cover for racial and sex discrimination. We ask this committee to study this problem and to amend the bill to prevent subtle as well as overt discrimination in the industry. We will gladly assist in obtaining support for such an amendment and for the bill.

Given the extent of the practices of discrimination, the failure of the states to solve it and the need for uniformity in eliminating discrimination, we welcome the introduction of S. 2204 and urge this committee's support for the bill.

The CHAIRMAN. Thank you very much.

Mr. Hacking.

Mr. HACKING. Thank you, Mr. Chairman.

I am the assistant legislative counsel for the 13.3 million American Association of Retired Persons. On behalf of the AARP, I am pleased to have this opportunity to express support for the Fair Insurance Practices Act.

The association strongly supports your efforts as chairman to reduce discrimination in the sale of insurance. The industry argues that State laws are adequate to prevent discrimination on the basis of race, color, religion, sex, and national origin. Forty-eight States have adopted an unfair trade practices act prohibiting unfair discrimination in insurance, while some 19 States have adopted an antisex discrimination statute.

However, most of the State unfair trade practices acts are very limited in scope, only prohibiting discrimination between individuals within the same class. None of them refers specifically to race, color, religion, sex, or national origin.

The State statutes prohibiting sex discrimination in insurance are also equally limited in scope. These apply only to availability, coverage, and conditions of insurance and not to sex discrimination with regard to rates and costs. In this situation the AARP thinks that Federal legislation is both needed and appropriate.

The insurance companies argue that the statistical association between sex and mortality justifies the use of sexually segregated actuarial tables. The industry argues that women as a class live longer than men and it claims that fairness requires each class of risk be charged rates appropriate to the cost arising from the risks. It therefore finds sex a valid criteria for determining insurance rates and benefits. However, in reality most men have the same death age as most women. Thus, because some women do not match the death ages of the men, the industry discriminates against all women in annuity payments.

In our view there is no basic difference between sex discrimination and race discrimination. Each is equally harmful and immoral. Each imposes group discrimination on an individual because of an immutable factor that may not be related to life expectancy. The industry is regulated by Government with the aim of advancing social goals. For reasons of social policy, certain classifications that may be perfectly useful from an actuarial standpoint may be barred.

For instance, while discrimination based on race is more economically rational than color blind insurance classification schemes, society has generally rejected racial discrimination and the insurance industry has followed suit. Thus, there is now an equitable distribution of costs on purely social grounds rather than purely economic ones. There is little reason why this same equity cannot be extended so as to proscribe the use of gender-based actuarial tables.

That concludes my statement, Mr. Chairman. However, I would like to indicate that the association hopes to work with the committee to push this legislation along. We think it is very desirable.

[The statement follows:]

STATEMENT OF JAMES M. HACKING, ASSISTANT LEGISLATIVE COUNSEL, AMERICAN ASSOCIATION OF RETIRED PERSONS

I. INTRODUCTION

The American Association of Retired Persons appreciates the opportunity to testify on the "Fair Insurance Practices Act" before the Senate Commerce Committee. Gender-based discrimination in the insurance industry is both widespread and varied. While many states prohibit unfair trade practices, few proscribe sex discrimination. Women not only face barriers in applying for insurance but also are treated unfairly in policy terms and premium rates. The Association is especially interested in Senate Bill 2204 because of the serious financial problems many older women confront. Thirty percent of all women 65 and over live near or below the poverty level. Elderly single women face an even worse plight. They comprise 61 percent of all individuals 65 and over, and almost 40 percent of them live near or in poverty.

The Association supports Senator Packwood's efforts to reduce discrimination in the sale of insurance. We hope that these hearings can lead to the elimination of discriminatory practices which operate to the detriment of older women.

II. THE NEED FOR FEDERAL LEGISLATION

The insurance industry argues that state laws are adequate to prevent discrimination on the basis of race, color, religion, sex, and national origin. Forty-eight states have adopted an unfair trade practice act prohibiting unfair discrimination in insurance, while nineteen states have adopted an anti-sex discrimination in insurance statute. Most of the state unfair trade practice acts are limited in scope, prohibiting only unfair discrimination between individuals of the same class and with equal expectation of life or of essentially the same hazard. Thus, these laws do not go far enough, since statistics can often show that members of various classes do not have

equal expectation of life. None of these laws specifically refer to race, color, religion, sex, or national origin, and there have been no court decisions indicating that the laws apply to these criteria. The specific statutes prohibiting sex discrimination in insurance are also equally limited in scope. These statutes apply only to availability, coverage, and conditions of insurance and *not* to sex discrimination with regard to rates and costs.

Furthermore, while the Supreme Court decision in *L.A. Department of Water & Power v. Manhart* and decisions that followed prohibit discrimination in employment-related insurance and pensions, the individual purchaser is left without protection. In light of the McCarran-Ferguson Act, it would be difficult, if not impossible, for the courts to extend the *Manhart* prohibition to non-employment related insurance. Hence, federal legislation is needed.

III. A DISCUSSION OF THE ARGUMENTS INVOLVING INSURANCE DISCRIMINATION

The insurance companies argue that the statistical association between sex and mortality justifies the use of sexually segregated actuarial tables. These segregated tables reflect the difference in longevity between men and women in one of two ways: the insurer either constructs a table for each sex based on actual mortality data or it crudely approximates actual experience by "setting back" the male table. In other words, a table is constructed for men and then applied to women after subtracting a fixed number of years from each woman's age. Therefore, with segregated tables, life insurance is cheaper for women than for men while annuity benefits are cheaper for men than for women. When integrated tables are used, data from both sexes are pooled and the sexes bear equal costs for both life insurance and annuities. There is evidence that even where gender-based tables are used for both life insurance and annuities, the annuities setback is inflated as compared to the life insurance setback—to the disadvantage of women.

Different premium rates are justified, according to the industry, based on the fact that women, as a class, live longer than men, and it claims that fairness requires each class of risk be charged rates appropriate to the costs arising from that risk. It, therefore, finds sex a valid criteria for determining insurance rates and benefits. However, in reality, most men have the same death age as most women. In fact, statistics show that only approximately 14 percent of all women have different death ages than men. Thus, because 14 percent of the women did not match the death ages of the men, the industry discriminates against women in annuity payments. Certainly, this 14 percent figure does not justify extreme sex-based differentials in policy treatment.

Any number of selective criteria can be used as a basis for risk classification. These criteria relate to the types of risks that influence life expectancy. The industry argues that sex discrimination is justified because female longevity is a genetic or biological characteristic. However, many major investigators now believe that social, cultural, environmental, and behavioral factors are more important than genetic or biological factors in explaining sex mortality differences. While insurers maintain that sex is an economical classification factor, and indeed it is convenient, other less arbitrary and invidious classification schemes could be used without compromising economic rationality (e.g., occupation, health, family medical history).

There is no basic difference between sex discrimination and race discrimination. Each is equally harmful and immoral; each imposes group discrimination on an individual because of an immutable factor that may not be causally related to life expectancy. Insurance companies use gender classifications because they are easy to apply, but many insurance companies ignore other more relevant classification criteria affecting life expectancy. The industry's failure to use other criteria besides sex significantly reduces the credibility of the insurance companies' claim that fairness requires each class of risk be charged rates appropriate to the costs arising from the class.

The insurance industry is regulated by the government with the aid of advancing social goals. It is obvious that not all social goals may be harmonized with purely economic considerations. Sex is not the only possible source of variation in mortality rates. Other possible risk classification factors include race, age, socio-economic status, religion, habits, hobbies, and lifestyles. Thus, the concept of actuarial equity involves a value judgment in determining which factors will be employed. For reasons of social policy, certain classifications that may be perfectly useful from an actuarial standpoint may be barred. For instance, while discrimination based on race is more "economically rational" than color-blind insurance classification schemes, society has generally rejected racial discrimination and the insurance industry has followed suit. Thus, there is now an equitable distribution of cost on purely social

grounds rather than economic ones. There is little reason why this equity cannot be extended so as to proscribe the use of sex-based actuarial tables.

Finally, insurers have suggested that mandated use of unisex actuarial tables would cause men to leave the insurance market, but this seems unlikely. While most employer-sponsored insurance plans do not use sex and all other predictors are ignored, this course has not caused an exodus of individuals from the insured pools.

IV. CONCLUSION

Women are, on the whole, economically disadvantaged when compared to their male counterparts. This is even more true of elderly women. Because of this economic disparity, women are less able to save for old age. It seems patently unfair to allow a discriminatory policy in the annuity and pension plan areas to perpetuate that economic inequality.

The CHAIRMAN. Thank you very much.

Ms. Pinzler.

Ms. PINZLER. Mr. Chairman, my name is Isabelle Katz Pinzler. I am here testifying today in favor of S.2204 on behalf of the American Civil Liberties Union.

I am not going to summarize my testimony because I think that everything that I would have said either has been said or will be said by somebody else or is covered in my written testimony, and most of what is being heard today and what is being said today is not new and has been testified to before. Most of what is in my testimony was testified to by one of my colleagues 2 years ago on H.R. 100, so I see no particular point in doing that.

But I do want to point out that the ACLU has been responsible for many of the cases litigated to the Supreme Court under the 14th amendment, which expanded the interpretation of gender discrimination equality requirements.

We are very active in title VII litigation and attempts to enforce pension equality under title VII, and we are being fought tooth and nail on that. Even though *Manhart* was decided in 1978, that fight is by no means over, and we are very involved in equal pay litigation. And of course we did favor the equal rights amendment and do again favor the equal rights amendment.

I have found in my travels around the country speaking on behalf of the equal rights amendment, not so much in the last year or so but before that, a frequent question was: What difference would it make; don't you already have all the equality you need as a result of various Supreme Court decisions, as a result of title VII and the Equal Credit Opportunities Act and title IX?

Well, Mr. Chairman, here is a perfect example of a major area of American life which is completely untouched by notions of gender equality. I think it is time for this law to pass. I think that this law and other versions of it have been languishing in the Halls of Congress long enough.

The equal rights amendment was reintroduced yesterday, and of course we applaud that, but we all have to understand that that is going to be a very long haul and require the kind of numbers that a simple act of Congress would not require. So I would say to those who introduced the equal rights amendment yesterday, this is something you can do now and not to dilly-dally around on because as each day passes, women suffer as a result of the discrimination which has been amply testified to by others.

And to those who oppose the equal rights amendment but said that they however favored equal rights for women without an amendment, I would say that this is a perfect example to put your laws where your promises are and enact this law. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF ISABELLE KATZ PINZLER, DIRECTOR, WOMEN'S RIGHTS PROJECT,
AMERICAN CIVIL LIBERTIES UNION

The American Civil Liberties Union (ACLU) is a nationwide, non-partisan organization of over 250,000 members dedicated to defending the right of all persons to equal treatment under the law. The ACLU has consistently endorsed and promoted principles of individual liberty, including the right of all persons to treatment under the laws on the basis of their individual conduct, characteristics, and merits. Recognizing that confinement of women's opportunities is a pervasive problem at all levels of society, public and private, the ACLU established the Women's Right Project to work toward the elimination of gender-based discrimination. The elimination of gender-based discrimination in insurance has been of particular concern to the ACLU Women's Rights Project. Attorneys with the Project represented amici curiae in *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978), in which the Supreme Court held that Title VII of the Civil Rights Act of 1964 prohibited an employer from deducting more from women's salaries than from similarly situated men's salaries to fund a pension plan that paid men and women equal monthly benefits. We also represent the plaintiffs-appellees in *Peters v. Wayne State University and TIAA-CREF*, 476 F. Supp. 1343, (E.D.Mich. 1979) (appeal pending, Sixth Circuit Court of Appeals, Nos. 79-1658, 79-1670, 79-1671), and amici in *Spirit v. TIAA*, 475 F. Supp. 1298 (S.D.N.Y. 1979) (appeal pending, Second Circuit Court of Appeals, Nos. 79-7715, 79-7737, 79-7739).

The ACLU strongly favors the Fair Insurance Practices Act (S. 2204). In the wake of the expiration of the ratification period for the proposed Equal Rights Amendment, this bill presents a tremendous opportunity and challenge to those who opposed the ERA but claim to favor equal rights without a constitutional amendment. They can now prove that this assertion was not merely an empty slogan. Insurance is one of the few remaining areas in American life where blatant intentional discrimination on the basis of sex is not only permitted, but virtually required by the industry in question. Because of Acts of Congress, women across this country have a measure of legal rights in employment, (Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; the Equal Pay Act of 1963, 29 U.S.C. § 206(d); the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e(k)), in credit (the Equal Credit Opportunity Act, 15 U.S.C. § 1691 *et seq.*), and in some aspects of education (Title IX of the Education Amendments of 1972, 20 U.S.C. 1681, *et seq.*) Because of a long line of Supreme Court decisions, women have gained a measure of equality under certain federal laws (e.g., Social Security)¹ and some state laws (e.g., administration of estates,² Workers' Compensation,³ jury duty,⁴ age of majority,⁵ domestic relations.)⁶ It is time for Congress to take action on S. 2204. Various versions of this legislation have been languishing in Congress for a number of years. While we appreciate these hearings, they are not enough. Merely proposing legislation and investigating its ramifications year after year is not enough. Now it must be passed. We cannot await a new ERA. Insurance remains a glaring, pernicious and persistent exception to the general principle of sexual equality in American life.

The insurance industry justifies its choice of gender as a classification on the grounds that women, as a group, live longer than men as a group; and that young men as a group have higher accident rates than young women as a group. While we do not concede either the accuracy or the propriety of the statistical methodologies used by the insurance industry to defend the use of gender as a classifier, this statistically-based conclusion is irrelevant in our view. Rather, the debate here is fundamentally one of philosophy. The question comes down to whether we as a nation choose to classify individuals solely on the basis of membership in a group defined

¹ *Weinberger v. Wiesenfeld*, 420 U.S. 636 (1975); *Califano v. Goldfarb*, 430 U.S. 199 (1977).

² *Reed v. Reed*, 404 U.S. 71 (1971).

³ *Wengler v. Druggist Mutual Insurance Co.*, 446 U.S. 142 (1980).

⁴ *Taylor v. Louisiana*, 419 U.S. 522 (1975); *Duren v. Missouri*, 439 U.S. 357 (1979).

⁵ *Stanton v. Stanton*, 421 U.S. 7 (1975).

⁶ *Kirchberg v. Feenstra*, 450 U.S. 455 (1975); *Orr v. Orr*, 440 U.S. 268 (1979).

by sex, race, religion, national origin, or other characteristics beyond the individual's control.

Opponents of this legislation consistently use the terms "women, as a group. . . .", "men, on the average. . . ." "collective Bobs" and "collective Sues".⁷ They assert "actuarial equality", i.e., that discrimination on the basis of sex is fair because women as a group receive equal benefits or pay equal premiums with men as a group. Of course, this ignores individual characteristics. Some women, most in fact, do not live longer than most men of the same age; despite a life expectancy difference of six to nine years, no woman has a guarantee of living six to nine years longer than most men of her age. An actual Sue has no guarantee of outliving an actual Bob. Of a random group of 1,000 men and 1,000 women at age 65 at a single point in time, 84 percent will match in death ages. This means that the remaining 8 percent of the women will live longer and the remaining 8 percent of the men will live shorter than the 84 percent group. Yet the entire male group will pay less for annuities and the entire female group will pay more. The converse is true with life insurance. Because a few women live longer, they all reap the benefit. Because a few men die early, they are all penalized.⁸

The fact that women, in the aggregate, receive the same total benefits as men in the aggregate is cold comfort indeed to the individual women who, even if she is suffering from a terminal illness when she retires, must struggle on a smaller monthly pension or annuity than her healthy male counterpart. Fairness to a class of women does not justify unfairness to individual women. It is a most fundamental principle of the American tradition that no individual should be considered simply as a part of a racial, sexual, religious, or ethnic group, or treated differently because of his or her membership in that group.⁹

In the context of insurance, no individual can ever overcome the stereotypes or "averages" of his or her group. Even prior to the passage of Title VII, it was sometimes possible for the exceptional women or black to overcome discrimination and obtain a job usually reserved for white men. but no young man, regardless of how safely he drives, no women, regardless of how healthy she is, and no older woman, regardless of how soon she may be expected to die because of an illness, can ever overcome the classification into which he or she is put because of his or her sex.

The same theories which are now used to defend classifications based upon sex have in the past been used to defend racial classifications, although some state laws¹⁰ and social policy¹¹ now forbid this. In fact, classification by race will show that whites live longer and suffer less sickness and disability than blacks. It was not so very long ago that the insurance industry justified race classification on the ground that it was "dictated entirely by actuarial findings"¹² and was thus not discriminatory.

Classification by religion will show that the mortality rates for Mormons are substantially lower than those of the general population and that by age 65 Jewish

⁷ An advertisement by the Aetna Life & Casualty Co. appearing in major publications entitled "Our Case for Sex Discrimination".

⁸ Bergman and Grey, "Equality in Retirement Benefits", Civil Rights Digest, 24, 25 (1975).

⁹ Remedial affirmative action may be a partial exception to this. It is used only where past discrimination is found, and in any event, is never an absolute bar to individuals not in the protected group. In insurance, no individual can ever overcome the classification into which her gender places her.

¹⁰ Ariz. Rev. Stat. Ann. § 20-384, sub. 2 (West 1980); Ark. Stat. Ann. § 66-3005(7g) (1979); Cal. Ins. Code §§ 10140, 10141 (West 1972); Conn. Gen. Stat. Ann. § 38-61(10) (West 1972); Ill. Ann. Stat. § 73-1031, sub. 3 (Smith-Hurd 1980); Ky. Rev. Stat. § 304.12-085 (Bobbs-Merrill 1971); Md. Ann. Code §§ 482-234A, sub. (a)+(c), 48A-234AA, sub. (a)+(c); Mass. Ann. Laws § 175:122 (1979); Mich. Comp. Laws Ann. § 500.2082 (West); Mont. Code Ann. § 33-18-210; N.J. Stat. Ann. § 17:29B-4, sub. (c)+(d) (West 1973); N.Y. Ins. Law § 40 (10) (McKinney 1966); N.D. Cent. Code Ann. § 26-30-04(11) (1972 and 1981 Supp.); Ohio Rev. Code Ann. Title 39 § 3911.16; R.I. Gen. Laws §§ 42-62-11, 42-62-14 (1977); Wash. Rev. Code Ann. §§ 40.60.175, 40.60.178 (West 1962).

¹¹ Brilmayer, et al., "Sex Discrimination in Employer-Sponsored Insurance Plans: A Legal and Demographic Analysis" 47 U. Chi. L. Rev. 505, 536 n. 147 and accompanying text (1980).

¹² James Marquis, "The Metropolitan Life: A Study in Business Growth" (New York, Viking Press, 1947) pp. 338-39 as quoted in National Women's Conference Official Briefing Book 11/77. Statement of Herbert S. Denenberg, then Pennsylvania Insurance Commissioner, Prepared for Hearing on Economic Problems of Women before the Joint Economic Committee of the U.S. Congress on Women's Access to Credit and Insurance, 4 (July 12, 1973); James, "The Metropolitan Life: A Study in Business Growth," 338, 339 (1976); see also Kimball, "The Purpose of Insurance Regulation: A Preliminary Inquiry in the Theory of Insurance Law", 45 Minnesota L. Rev. 471, 496 (1961); Fellers & Jackson, "Noninsured Pensioner Mortality: The VP-1984 Table", Proceedings, Conference on Actuaries in Public Practice, 456, 459 (1976).

mortality rates are higher than those for the total population at age 65.¹³ Yet, insurance companies properly do not use religion as a classification characteristic.

Several factors, of course, distinguish classifications by gender, race, religion and national origin, from others such as age or deleterious behavior. Behavioral classifications, such as smoker/nonsmoker or obese/moderate weight, are more clearly related to mortality and morbidity than is sex or race. Reliance upon such classifications would encourage desirable behavior.¹⁴ In contrast, there is substantial doubt concerning the existence of a causal relationship between gender and longevity.¹⁵ While sex and race are immutable, age affects everyone. Classifications based on the former characteristics penalize only some of the population, while age-based calculations cut across all segments. Every individual's age inevitably and progressively changes; one's race and sex do not. Anyone who wants a larger pension need only wait and retire at a later age. One need only get older, or even get married in order to obtain lower automobile insurance.¹⁶

The ACLU opposes all sex discrimination in insurance: that which favors women, as well as that which favors men. As a matter of principle both are unacceptable because both ignore individual characteristics and resort to imperfect and invidious classification systems instead of more rational ones. It is our observation, however, that on the whole it is women who suffer more as a result of being grouped by sex.¹⁷ Although we have characterized this debate as philosophical, the actual impact of insurance discrimination on real women is tragic and painful.

Elderly women are at the bottom of the economic ladder in this country. According to the U.S. Department of Labor statistics, in 1976, women over 65 had the lowest median income of any sex or age group—\$2,800.¹⁸ This figure was approximately one half of the median income for men in that age bracket. In 1977, the median income for women over 65 was \$3,087 compared to \$5,526 for men.

Women receiving pensions, either through their own or through their spouses' entitlements, get a lower periodic dollar amount from both public and private pensions: the median private pension amount in 1976 for older men was \$2,060 and for women was \$1,340, while the median public pension amounts were \$4,830 for men and \$2,750 for women. This same pattern is also reflected in Social Security income. The average Social Security income for all aged women in 1978 was \$2,537 compared to \$3,390 for men.¹⁹ As the elderly proportion of the population increases, the number of elderly women in poverty will also rise.

These stark statistics are the result of many indirect factors. Women have less wage earning experience resulting in lower Social Security benefits and smaller pensions. Discriminatorily depressed wages lead to discriminatorily depressed pensions. Women who devote their lives to supporting their husbands' careers by being housewives and mothers may, in the event of a divorce in later life, find themselves with no means of support and with no right to share in their ex-husbands' pension benefits. See, e.g., *McCarty v. McCarty* 453 U.S. 210, 69 L.Ed. 2d 589 (1981), *Hisquierdo v. Hisquierdo*, 43 U.S. 572 (1979).

Such problems are tragic enough; but they are exacerbated by direct, deliberate, and explicit forms of discrimination in pensions and annuities, the subject of S.

¹³ See, Estrom, "Cancer Mortality Among Mormons", 36 Cancer 825, 839 (1975); Fauman & Mayer, "Jewish Mortality in the United States", in *Ethnic Groups of America: Their Morbidity, Mortality and Behavior Disorders*, Vol. I, 36 (Shiloh & Selavan, Eds. 1973).

¹⁴ Halperin and Gross, "Sex Discrimination and Pensions: Are We Moving Toward Unisex Tables", Proceedings of the New York University Thirtieth Annual Conference on Labor, 235, 250 (1977).

¹⁵ In *City of Los Angeles v. Manhart*, 435 U.S. 702 (1978), the Supreme Court noted that a significant part of the longevity differential between the sexes may be explained by social factors such as men being heavier smokers than women, having different employment conditions. 435 U.S. at 710 n. 17. Brilmayer, et al., *supra* note 11, at pp. 539 *et seq.*

¹⁶ See generally the discussion of age classifications as compared to race, gender classifications, religion and national origin in Brilmayer et al., *supra* note 11, at pp. 526-533, 536-539.

¹⁷ Higher automobile insurance rates apply only to men within a certain age category. Once this is past, rates even out. This hardship could be shared by young women of the same age without great dislocation. More important, auto insurance rates can and should be assigned based upon the individual's driving record. As time passes and a person remains accident free or violation-free, his/her rates should go down.

Life insurance is another area where women are said to have an advantage. It should be noted, however, that the set back for life insurance rates is frequently not as great as that for pensions and annuities. Furthermore, to the extent that higher rates are charged men, women are often penalized: higher male rates afford less coverage for the same dollars for the surviving wives than for surviving husbands.

¹⁸ See "Older Women: The Economics of Aging," published by the Women's Studies Program and Policy Center at George Washington University (1980) at pp. 8-12.

¹⁹ *Id.*

2204. As job opportunities increase for women, some of these problems can be ameliorated. Other legislation is before Congress to give military ex-wives a fair share of the pensions they helped their husbands earn.²⁰ But without legislation such as the Fair Insurance Practices Act, older women will remain at a permanent disadvantage.

Insurance companies continue to classify people on the basis of their sex in the setting of premiums and benefits. Thus, in the context of pensions and annuities, women either pay more than similarly situated men to get a policy with the same coverage, or pay the same but receive smaller periodic annuity payments. This practice is justified on the ground that statistics demonstrate that women, as a group, live an average of six to nine years longer than men, as a group. Yet in the area of life insurance, where consistency would mandate that premiums be calculated on a male mortality table that is set back six to nine years, premiums frequently are calculated with only a three year setback.²¹ In an employment setting it is not unusual for pensions to be calculated on sex-based tables, to the detriment of women, and for life insurance to be calculated on unisex tables, again to the detriment of women.

Until recently, disability coverage often was not even available to women. Where it now is available, it almost uniformly excludes payments for disabilities related to pregnancy, childbirth or miscarriage. Frequently, waiting periods are longer, benefit periods shorter and monthly benefit payments subject to lower maximums than those applicable to men.²² In spite of the fact that homemakers require housekeeping and/or childcare when they become disabled, disability insurance is almost universally unavailable to them.²³

Women are also at a severe disadvantage in buying health insurance. Maternity benefits are frequently subject to waiting periods of up to 10 months. This is justified on the grounds that it discourages "adverse" selection by pregnant women, although rarely do such policies make exceptions for unplanned events such as miscarriage or other pregnancy complication. Some states still allow total exclusion of conditions related to female reproductive organs. In spite of these limitations, women are charged 50 to 60 percent more for health insurance than men.²⁴ Even with exclusion of maternity benefits, women pay more than men for health insurance.

Other discriminatory practices in health insurance coverage include refusals to cover husbands of women employees under family plans unless the women are able to prove that their spouses are financially dependent on them for reasons of physical or mental disability.²⁵ A husband's health insurance policy may override his wife's when benefits are claimed for their children, regardless of how much more extensive the wife's coverage for their children may be.

Following *Manhart*, there has been a growing consensus among courts, federal agencies and commentators, that both contributions and benefits must be equal in an employer sponsored pension plan.²⁶ In fact, all courts which have confronted the

²⁰ S.S. 1453 (Sen. DeConcini, Ariz.), would, if passed, immediately reverse the *McCarty* decision. H.R. 1711 (Rep. Hance, Tex.), would make automatic the payment of the agreed-upon or court-ordered portion, allowing no third-party interference or change of allotment amount or designation by the retired military member. The Hance bill would provide some sense of security and dignity for the ex-spouse. H.R. 3039, (Rep. Schroeder, Col.); H.R. 3117, (Rep. Mikulski, Md.); S. 888 (Sen. Durenberger, Minn.); and recently introduced legislation, S. 1648 (Sen. Hatfield, Ore.), would accomplish federal relief for the problem as a whole.

²¹ Naierman & Brannon, "Sex Discrimination in Insurance" (1977) in United States Commission on Civil Rights, Consultation on Discrimination Against Minorities and Women in Pensions and Health, Life and Disability Insurance (hereafter Consultation), Vol. I, 473 at 487 (1978); Denenberg, "An Overview Report: Discrimination in the Insurance Marketplace and in the Insurance Business", in Consultation, supra, 257 at 269-70. Denenberg, former Insurance Commissioner of Pennsylvania, reports that some inroads have been made in this discriminatory practice. Id.

²² Naierman & Brannon, supra note 21, at 479.

²³ Id. at 478-479.

²⁴ Id. at 484; Women Employed, "Sex Discrimination in Disability and Health Insurance" January 1976.

²⁵ Naierman and Brannon, supra note 21 at 483.

²⁶ See *Norris v. Arizona Governing Committee for Tax Deferred Annuity* 671 F.2d 330 (9th Cir. 1982); *EEOC v. Colby College*, 589 F.2d 1139 (1st Cir. 1978); *Spirit v. Long Island University & TIAA-CREF*, 475 F. Supp. 1298 (S.D.N.Y. 1979); *Peters, et al. v. Wayne State University and TIAA-CREF*, 476 F. Supp. 1343 (E.D. Mich. 1979) Department of Labor's Proposed Amendment to 29 CFR 800.16(d) and 800.100, 43 F.R. 38029 and 38057 (1978); Bernstein & Williams "Sex Discrimination in Pensions: *Manhart's Holding v. Manhart's Dictum*", 78 Colum.L.Rev. 1241,1242 (1978); The Supreme Court, 1977 Term, 92 Harv.L.Rev. 57 at 309 (1978).

issue have held that an employer cannot, consistent with Title VII, take equal contributions and provide unequal periodic benefits upon retirement.²⁷ The Supreme Court recently reaffirmed the principle that so-called "bottom line" fairness to blacks or women as a whole does not excuse discriminatory practices which harm individual members of the protected group. See *Connecticut v. Teal*, 50 U.S.L.W. 4716 (June 21, 1982).

The post-*Manhart* judicial decisions demonstrate an important trend favoring the elimination of gender-based actuarial tables. At the same time, they reveal the inadequacy of litigation under Title VII as a solution to the problem. Title VII applies to employers. It does not apply to insurance companies unless they are found to be the agents of employers or employers themselves. See *Manhart*, 435 U.S. at 718, n. 33; *Spirit*, 475 F.Supp. at 1308; and *Peters*, 476 F. Supp. at 1350.

Title VII litigation will only pressure insurance companies indirectly by increasing employer demand for gender-neutral policies. Insurance companies will be free to market policies based on sex-segregated tables to individuals and to employers willing or forced to pay different prices to equalize female and male annuities and life insurance benefits. This may even create incentive for employers further to discriminate against women because of the increased cost of their fringe benefits.

S. 2204 would do directly, completely and uniformly what Title VII can only do indirectly and partially. Although insurance regulation has traditionally been left to the states, examination of state legislation reveals its inadequacy on this issue.

No state yet prohibits discrimination in rates or premiums on the basis of sex. Only eleven states prohibit gender discrimination in the issuance or renewal of policies.²⁸ Seven others, while prohibiting such discrimination on the basis of race, color, creed or national origin, do not prohibit sex discrimination.²⁹

California's insurance code actually requires differentials in ordinary life insurance and individual life annuities based on sex where they are "substantially supported by valid pertinent data segregated by sex."³⁰ Moreover, it explicitly prohibits the use of race, color, religion or national origin or ancestry as a condition or risk for which a higher rate premium or charge may be required for life or disability insurance.³¹

Massachusetts, although prohibiting discrimination as to premiums or rates for life insurance policies sold to "colored persons wholly or partly of African descent", prohibits discrimination on the basis of sex only as to the issuance of policies and the limiting of coverage.³²

S. 2204 would set a uniform standard of non-discrimination. It would also eliminate the competitive pressure for insurance companies to maintain sex-based actuarial tables. In the absence of federal legislation insuring uniformity,

"... it would be cheaper for a woman to go to an insurance company with dual tables for life insurance and cheaper for a man to go to an insurance company with unisex tables for life insurance, [and] the end result would be the same as if there were dual tables. Only men would buy life insurance from a company dealing with the unisex table and women from a company with a dual table. The reverse would hold true in the annuity area."³³

S. 2204 would eliminate this problem.

An essential feature of S. 2204 is its provision regarding contracts of insurance existing on the date the bill becomes effective. Although not retroactive, it unequivocally mandates that under existing contracts premiums due and benefits resulting from premiums paid at any time cannot, after its effective date, be calculated on sex-segregated tables. This demonstrates a necessary commitment to end

²⁷ *Norris*, supra; *Henderson v. Oregon*, 405 F.Supp. 271 (D.Ore. 1975) (approval of consent decree); *EEOC v. Colby College*, supra; *Spirit v. TIAA-CREF*, supra; *Peters v. Wayne State University*, et al., supra. See also, *Reilly v. Robertson*, 360 N.E. 2d 171 (Ind. S.Ct.), cert. denied, 434 U.S. 825 (1977) relying on state equal rights amendment.

²⁸ Ark.Stat. Ann. §66-3005(7g) (1979); Colo.Rev. Stat. §10-3-11-4 (1XFXIII) Supp. 1978; Fla.Stat. Ann. §626.954(24) (West Supp. 1979); Ky.Rev.Stat. §304.12-085 (Supp. 1978); Md. Ann. Code §148A-234A, 48A-234AA (1978); Mass.Gen. Laws Ann. Ch.175 §24A (West 1977); Mich.Comp. Laws Ann. §500-2027 (Supp. 1979-1980); N.D. Cent.Code §26-30-04(1)(1981); N.Y. Ins. Law §40-e (McKinney Supp. 1978-79); R.I. Gen. Laws §§42-62-11, 42-62-14; Wash.Rev.Code Ann. §49.60.178 (Supp. 1978).

²⁹ Ariz.Rev.Stat. Ann. §20-384, sub.2 (West 1980); Cal. Ins. Code §§10140, 10141 (West 1972); Conn.Gen.Stat. Ann. §38-61 (10) (West Supp. 1979); Ill. Ann. Stat. §73-1031, sub.3 (Smith-Hurd 1980); Mont.Code Ann. §33-18-210; N.J. Stat. Ann. §17. 29B-4, sub.(c), (d) (West 1973); Ohio Rev. Code Ann., Title 39 §3911.16.

³⁰ Cal. Ins. Code §790.03(f) (West Supp. 1979).

³¹ Cal. Ins. Code §10140 (West 1972).

³² Mass. Gen. Laws Ann. Ch. 175B, §§ 24A and 122 (West Supp. 1979).

³³ Notes, "Sex Discrimination and Sex-Based Mortality Tables", 53 B.U.L. Rev. 624, 655 (1973).

gender discrimination in insurance now, rather than perpetuating inequality for another generation. At the same time, it protects both the insurers and the insureds. Insurance companies are entitled to increase the premiums due under existing contracts if it is necessary to comply with the Act. However, they are not permitted to decrease benefits due insureds under existing contracts.

To permit sex-segregated tables to be applied to contributions or premiums paid prior to the effective date would permit the present inequities to continue for several decades. Only those women who began paying premiums after the effective date of the statute would retire, many years later, with annuities equal to those bought by their male counterparts. Any woman currently paying premiums would never be able to retire with an annuity equal to her male counterpart who had made identical payments. S. 2204 reflects a proper realization that this is an inadequate remedy and that the elimination of gender discrimination cannot wait until some time in the twenty-first century.

S. 2204, as currently drafted, has one important shortcoming—it has no enforcement procedures. The ACLU urges that, at a minimum, S. 2204 should be amended to include the enforcement provisions found in H.R. 100: "Non-Discrimination in Insurance Act" § 5 ("State or Local Enforcement Prior to Judicial Enforcement Under This Act"), § 6 ("Civil Action by or On Behalf of Aggrieved Person"), § 7 ("Civil Action by the Attorney General Involving Issues of General Public Importance"), § 8 ("Jurisdiction"), and § 9 ("Judicial Relief.") Our own experience indicates that a federal administrative enforcement agency, such as the Equal Employment Opportunity Commission is essential to ensure that aggrieved persons, especially those with limited financial resources, can enforce their rights. However, without any enforcement procedures, either by private right of action or by the Attorney General, the law becomes virtually meaningless; it creates rights without remedies.

Another important feature of the H.R. 100 enforcement scheme is that it leaves states free to administer their own anti-discrimination system. If they enact proposed federal anti-discrimination provisions as state law and establish administrative systems to process alleged violations, individuals will be required initially to seek their remedies in that state system. It thereby permits the states to retain their status as primary regulators of the insurance industry, provided they maintain, as a minimum, the federal anti-discrimination standard.

In sum, gender discrimination is rampant in the insurance industry. It has resulted primarily from the fundamental sex classification upon which virtually all insurance rates are based. The only way to end this practice is uniformly to prohibit it through federal insurance legislation such as S. 2204. This Country's commitment to the elimination of sex discrimination demands no less.

The CHAIRMAN. I know exactly whereof you speak. I was in the State legislature for 6 years. In fact, we had the redlining battle when I was in the legislature and we outlawed it in Oregon in 1966. But the very insurance companies who opposed any kind of Federal intrusion came and testified against any effort by the State to outlaw redlining. Their argument was of course that it is a State issue and the States will well take care of it, and we will just draw geographical lines. Everybody inside that box doesn't get insurance. No basis on individuality and actually no basis on black or white because white lived in the area. If you lived in the area, you still could not get any insurance. It was amazingly unfair.

I know what you mean about the Equal Rights Amendment. In the long run that will pass, but people don't work in the long run, they work day to day, and in the meantime we will do what we can to make the work fair. We will get the Equal Rights Amendment. Time and tide is on our side. But in the meantime we will get this this year.

Ms. PINZLER. I also think the failure to pass this kind of legislation is going to undermine some of the equal employment opportunity laws because, you know, we hear the argument that—and we see it happening now in our litigation—if it is solely on the backs of the employers to equalize pensions and equalize health insurance, then it is the employers who will be paying the difference,

not the insurance companies. One of the results will be a disincentive to equal employment opportunity for women. So it is undermining other congressional imperatives.

The CHAIRMAN. Ms. Ross.

Ms. Ross. Mr. Chairman, my name is Bella Ross and I am speaking on behalf of the National Council of Jewish Women to express our strong support for S. 2204, the Fair Insurance Practices Act. The National Council of Jewish Women is a volunteer organization with 100,000 members in 180 sections across the United States. NCJW members are committed to a broad program of education, service and social action, which includes participation in 1,500 direct service projects.

We have previously testified on this subject before the House committee.

NCJW is outraged at the blatant discrimination against women established and perpetuated by the insurance industry.

Today the female population makes up 42 percent of the workforce and 60 percent of these women are widowed, divorced or unmarried. Seventeen percent of all families are headed by a single woman. It is imperative that discriminatory roadblocks are removed so that women can achieve independence and full responsibility for their own lives.

Today women assume work responsibilities and financial responsibilities equal to those of men. We do not wish to become wards of the Federal Government, dependent on welfare assistance, food stamps, medicaid or social security subsidies. Building equity in insurance and equalizing benefits can help us to achieve independence.

We believe that in our free enterprise system, the private sector can, should and must provide equally for both men and women. Disability insurance is not readily available to women. Pension funding and benefit payments do not treat women equally as compared to men.

The U.S. Government cannot sanction any public policy which permits discrimination and then financially supports this policy by supplementary social service programs. No industry in the United States has the right to discriminate against an individual because of sex.

Each of us, and you, the elected officials of our Government, has fought long and hard to abolish discrimination in all forms. We cannot continue rampant discrimination in the private sector. This sex discrimination prohibits women from assuming an inalienable right—the right to dignity, the right to self-respect, the right to provide for her own needs.

Let me just cite one targeted discrimination which affects women of all ages—health coverage. Most health insurance providers do not cover "preventive medical treatment" which would include gynecological checkups, necessary to detect many forms of female cancer. Women, young and old, are aware that preventive medical care is a good investment. A recent study indicates that women have a lower morbidity rate than men and are absent from work less frequently and for shorter periods than men. Preventive care reduces long term costly illnesses and enables long term independ-

ent functioning. Thus, to deny insurance coverage for women's specific needs is indeed a foolish policy.

Current laws state that public policy must be made without reference to race, sex, religion or national origin. How can we permit the insurance industry, which is charged with implementing civil rights laws, to continue sex-based discrimination? Inequalities in policies are the direct results of a discriminatory process. Deliberate prejudice denies equal opportunities. Sex-based prejudice in this instance means denying a retired woman the right to fill her grocery sack as full as a retired man. This prejudice means that she has paid more for a longer period of time for less return and therefore will need supplementary support services to fill that grocery sack. Why should the Government assume the burden? What we are talking about is public policy and discrimination. Since this practice does not increase profits, why continue it?

The Government has been charged with the task of terminating any discriminatory practice. It must "correct and compensate for past and present discrimination and prevent discrimination from recurring in the future," as stated in the U.S. Commission on Civil Rights Report, January 1981.

S. 2204 addresses this serious problem as it exists in the insurance industry. I sincerely urge passage of this bill.

The CHAIRMAN. Ms. Ross, let me ask you a question that I put to the other panel about affirmative action. In my mind, that still seems to me some kind of group classification. Am I correct in my assessment that as far as it may relate to admissions to college or graduate schools there are a dozen minority categories and, as you are aware, on the census Jews are not counted as a minority. Will affirmative action result in some Jews not being admitted to graduate schools that would otherwise be admitted if admission was solely on merit?

Ms. Ross. Senator, we are certainly committed to civil rights for all individuals and admissions on the basis of merit. I think affirmative action is a goal. We do not agree with quotas, because they have been a problem in the past. I think I would not be able to go further than that general statement.

The CHAIRMAN. Let me ask the panel again. We can start with Mr. Hacking. When we talk about affirmative action programs, are those indeed an aberrational bridge between our concern for individual civil liberties and that this is a classification by group, whether it be women, blacks, Hispanics, or whatnot, to get us to a position of equality more rapidly than we would if we went one at a time and went through the lawsuit process? Is this the reason for affirmative action in collective actions rather than individual actions?

Mr. HACKING. Senator, I think many would view affirmative action as a bridge. Whether that is the view of everyone, however, I really cannot say. I would like to add one other thing. The AARP strongly supports the elimination of all manifestations of discrimination based on race, color, sex, national origin, and religion, but as to whether or not affirmative action is an appropriate means to achieve that objective, the association has no stated policy.

The CHAIRMAN. Ms. Pinzler?

Ms. PINZLER. When merit is that easily and that objectively measurable, if we ever arrive at that time when admissions—

The CHAIRMAN. Let me interrupt. I am not sure we will ever arrive at that time. I do not know yet of any testing system that is that good.

Ms. PINZLER. In answer to the question you asked Ms. Ross, if you do not get any credit for your father having gone to that school, or other kinds of pull, maybe it would be easier to answer that question. The other answer is that even under a situation with goals and timetables and affirmative action, the unprotected group is never entirely excluded from competition for those positions.

The CHAIRMAN. Say that again.

Ms. PINZLER. The unprotected group, the white men are never solely excluded from competition for those jobs or for those places in that school. They may in effect be competing for a smaller piece of the pie, but they are not precluded from competing at all. That is why it is so completely different from the insurance context, where there is no way you can ever overcome the presumption that is created by your race or your sex, and the category into which you are placed. As Dr. Gray said before, no woman, no matter how sick she is, no young man, no matter how safe a driver he is, can ever overcome the classification, and that is really where the distinction is. Even with goals and timetables, persons in that unprotected group can still compete for those jobs, and people in the protected group still have to prove their merit.

The CHAIRMAN. They can, but I still do not understand how they all come out evenly. Again I go back to experience. Oregon is a State that has a relatively slight minority population. There are not many blacks, not many Jews, not many Asiatics. And to our eternal shame—and I do not mean Oregon's, but this country's—we moved all the Japanese Americans out of Oregon during World War II and put them in our equivalent of concentration camps and took their property. Today, as I go through the high schools and I see that women are 80 percent of the achievers; it is also very clear that, despite the fact they are a tiny minority, Asiatics and Jews are sensational achievers. You can see it when they are recognized and stand up to take their awards.

I know those people can compete all right, but if there are only 100 positions for admission to the University of Oregon medical school, how can a few not help but be left out when you have affirmative action programs that say we want to get some Hispanics in, and some blacks in.

Ms. PINZLER. I think that just creates a fiction that does not exist that: "You, Mr. X, who did not get in would have gotten in but for the affirmative action policy." I know a lot of people are told that, but I think it is a pernicious practice, and I think it is a way of telling people or it is an explanation that is given to people for not having been accepted in a program when there was never a guarantee of acceptance. There are no guarantees in this life that you are going to get into—just because you scored better, that you are going to get into a particular program. Maybe you did not have the right extracurricular activities.

The CHAIRMAN. But you know that historically when we used quotas 25 or 50 years ago, the quotas were to make sure that too

many Jews did not get into graduate schools. Had they been admitted on merit alone, more Jews would have.

Ms. PINZLER. As a Jew, I am very well aware of that fact, but I still would have to say that blacks in particular and women in some areas have been tremendously discriminated against in this country, and we in this country have an obligation to do something to overcome the effects of that past discrimination. It depends on the area. In the building trades, for instance, women need affirmative action because there is tremendous hostility toward allowing women to even compete for those jobs.

In medical school, in law school, all you have to do is have equal opportunity, and women, as you pointed out, in most academic settings, women really do not need affirmative action. So you really have to look at the particular problem you are dealing with, and to the needs of that situation, and whether you are going to employ a bridge, a short-term solution to bring us to where we need to be. Affirmative action, you know, is tangential to this debate. Excuse me. Not debate, but to this whole discussion.

The CHAIRMAN. It is not debate. We are on the same side.

Ms. PINZLER. On this one, we are on the same side. I do not know about affirmative action, but to bring the argument back to judging a person totally on the basis of sex, national origin, or race, to allow no variation from that, no competition against that is simply, or ought to be an impermissible practice in this country. Those classifications ought to be something that we would not permit.

The CHAIRMAN. Let me tell you of a personal dilemma. It is not quite related to this. I have an administrative assistant who is a woman. She went through our office structure as rapidly as I have ever seen anybody go. She started as a secretary at \$12,000 in August of 1979, and was administrative assistant 21 months later. She also was doing what are so-called womens issues. She works with the issues of abortion, planned parenthood, and whatnot. She told me a couple of days ago she is leaving, she is going back to Louisville. She has pretty balanced judgment. I would keep her and bring her back in a moment, but she is going. So I have to hire somebody new. I have a limited budget.

I called up some of the women's groups and said, would you be able to work with a male administrative assistant and the uniform answer was no, that on that issue, for lobbying in those areas, it probably has to be a woman.

Ms. PINZLER. Well, I have to say that I think that is a mistake on their part.

The CHAIRMAN. I was not asking their personal opinion so much as how they would be received in those areas. In the abortion area especially, at least on the Republican side, it is my office that is looked to for leadership. The person does not just come and sit at the meeting.

Ms. PINZLER. I think reproductive freedom and gender equality should not be solely women's issues. The American Civil Liberties Union is clearly not solely a women's organization or a feminist organization. And yet we work for both of those issues and for racial equality as well.

The CHAIRMAN. Ms. Simmons, we have cut you out so far.

Ms. SIMMONS. I can say very quickly that affirmative action should be a temporary measure. My organization believes that. Affirmative action is designed to help to bring people up to where they would have been but for the fact of systemic discrimination. I was so naive when I was acting as a consultant for the Department of Labor on revised order 4 that, I thought that 5 years later we would be out of the affirmative action business. We are not. The NAACP believes in goals and timetables. We do not believe in quotas which set ceilings. We want to have a floor from which we can move upward.

Affirmative action is not limited to employment. There are so many discriminatory mechanisms that go to education, employment, a whole array of activities. All of these must be considered in terms of trying to ensure that we do not have discrimination against individuals and or groups, to keep them from reaching their full potential, but affirmative action should be a temporary device.

The CHAIRMAN. I have no more questions. Are there any more comments?

[No response.]

The CHAIRMAN. If not, again, thank you very, very much.

I would say again to the audience that it is my intention to run this hearing right through the lunch hour so we do not have to come back this afternoon. If we have a vote, we will have to take a 15-minute recess while we vote. We will come right back.

STATEMENT OF MAVIS WALTERS, ACCOMPANIED BY HAROLD INGRAHAM, ROBERT KNOWLES, AND ROBERT SHAPLAND, MEMBERS, COMMITTEE ON RISK CLASSIFICATION, AMERICAN ACADEMY OF ACTUARIES

Ms. WALTERS. Mr. Chairman, I am Mavis A. Walters, and I am a member of the American Academy of Actuaries Committee on Risk Classification. Jay Rips, who chairs the committee, asked me to present this report, since he could not be with us. Appearing with me are Harold Ingraham and Robert Knowles, also members of the actuarial committee. Among us, we have specialized knowledge in the major areas of insurance, life, auto, health, and pensions.

We are here to present to you our assessment of the economic impact of S. 2204, not to speak to the merits of the proposal itself, nor to take a position pro or con on the bill.

Our assessment of the bill's impact should be considered approximate rather than precise. There are many uncertainties and many judgments which have to be made in making an assessment. Nevertheless, we believe we have provided a reasonably realistic estimate of the probable economic consequences of S. 2204. The greatest effect from our perspective results from prohibiting the use of sex as a rating variable in the pricing of insurance. We have confined our analysis to that prohibition. We also have included some cost estimates for the requirement of full pregnancy coverage.

As you are well aware, many people obtain insurance coverage through group plans typically sponsored by their employer. We believe that S. 2204 would have little effect on the amount individuals would actually pay under group coverage. However, for those

people who purchase insurance on an individual basis, S. 2204 could have a significant effect on the amount these people would pay.

Generally, the effect for different types of insurance would be as follows. Women would pay more for life insurance; men would pay less. Women would pay less for annuities; men would pay more. Women would pay more for auto insurance; men would pay less. Women would pay less for disability insurance and men would pay more. The actual dollar effect, of course, on individual men and women would vary depending upon the types of insurance, their age and a host of other factors relating to individual circumstances. On balance, however, our study has found that women as a group will pay more for insurance if this bill is passed.

The effect on pensions is different. Here the major impact would be on benefits rather than on prices. It appears that benefits would generally be increased—for women in the case of some defined contribution type plans, and increased for men in some defined benefit plans. Naturally these increases in benefits do not come free but would have to be funded. In our judgment, that additional cost could amount to as much as \$5.5 billion annually.

The prohibition of sex-distinct prices could also involve significant administrative implementation costs, the magnitude of which would depend very heavily on the timeframe involved and on the extent to which existing inforce policies are affected.

We have also identified a number of indirect effects which might result from the elimination of sex as a consideration in determining insurance prices. Some of them I will just mention. It might be that we would be faced with an increase in the average price of insurance in general. This could happen as a result of the increased risk that the distribution by sex of the insured population would be different from the distribution which is assumed in the pricing formula. Additionally, it may be that the elimination of a statistically predictive rating variable could result in an overall pricing error.

Second, it is possible that there could be an increased emphasis on selling insurance to the arbitrarily overpriced risk, with possible steps to avoid selling insurance for those risks that are perceived to be relatively underpriced.

The CHAIRMAN. Say that again and tell me what you mean.

Ms. WALTERS. What we are saying is one cannot legislate away knowledge. To the extent that there is a recognition that certain insured risks—in some instances the men, some the women—the costs generated by those risks would dictate a certain price. We know what the proportion is.

Failure to recognize that in a pricing system could mean that when you introduce subsidies, those persons who are looking to purchase insurance who are now going to be paying less than their cost base price may find some difficulty in getting insurance voluntarily. There may be emphasis on behalf of those who are selling insurance to want to insure more of the group who are paying a little higher than they would otherwise be paying.

Mr. KNOWLES. For example, in the life insurance field, if all insurance companies were required to charge the same price for life insurance regardless of sex, an insurance company which sold a higher proportion of its business to women than the rest of the in-

dustry would have the opportunity to either charge a lower premium or realize a higher profit because of the lower mortality experience.

The CHAIRMAN. What you are saying is, if you could not differentiate in the premiums, some companies could be more profitable just on the basis of who they aim their selling at.

Ms. WALTERS. That is correct. That is the point.

Flowing from that, another indirect effect would be that you would need to have increased regulatory efforts and there would be some costs involved to assure availability of coverage. By that we mean we may need some complex and perhaps inefficient administrative controls to avoid supply shortages.

The fourth possible effect would that the search for new classification factors would have to be enhanced and advanced to try to restore the same level of predictive validity, which may in the end have the same bottom line, which does differentiate by sex but indirectly. One does not know that.

Fifth, we might find a diversion of resources to the implementation of unisex ratings, at the expense of new insurance product development or investigation of other pricing techniques.

To just summarize very briefly the economic consequences as we see it, virtually all of the economic effect of S. 2204 is due to the prohibition of sex as a rating factor in determining insurance prices. Second, the practical effect on women's insurance costs would vary with individual circumstances, but on balance it appears that insurance costs for women would increase.

Third, pension benefits would increase for women in some instances, for men in others, and undoubtedly those increases in benefits would have a significant price tag. There would be a number of indirect marketplace effects and, fifth, there would be increased administrative costs.

The number you mentioned earlier of \$1.3 billion was our number for administrative implementation.

The CHAIRMAN. You are right and I stand corrected. But that is only if we make it retroactive.

Ms. WALTERS. Most of the costs, right, are incurred by making it retroactive.

Underlying all of this, then, is a fundamental question: What do we mean by "fairness" in the context of insurance? There are no objective means by which to differentiate in advance with any certainty an individual's insurance risk from that of a group of individuals with similar risks. It is precisely this uncertainty which leads to the need for insurance. Therefore, some aspects of fair treatment or fairness which may apply in other contexts may not be appropriate or even possible in an insurance context.

The CHAIRMAN. Do you mean by this that if you look at 100 25-year-old men there is no statistical way to take them individually and say you are going to live to 46 and 56?

Ms. WALTERS. That is right.

The CHAIRMAN. It does not matter that half the smokers might live to 90.

Ms. WALTERS. We have identified the increased risk or lesser risk of individuals to the extent that they share certain characteristics with others to the extent that they are similar to other people, but

we can never predict with certainty an individual's risk for any type of insurance. We simply cannot know that in advance.

The CHAIRMAN. Are the mortality tables you use uniformly accepted as accurate? I thought the—

Mr. KNOWLES. I think there may be a misunderstanding that there is one actuarial table that is used by all insurance companies to price all products. The study you refer to conducts various mortality studies every year—mortality under individual insurance policies, mortality under individual annuity policies, mortality under group insurance policies, disability policies, mortality related to hazardous sports occupations, and so on.

Each of approximately 2,000 insurance companies and the actuaries in their employ will use the information from these studies and studies of their own company's experience under various kinds of policies to come up with their pricing system which they feel most effectively matches the costs of various kinds of benefits with the risks being assumed.

It is certainly my feeling that these studies are generally very accurate.

Mr. SHAPLAND. I might add to that. I have priced insurance for 25 years for my company and I have never even looked at those tables. Mine have been strictly based on my own company's experience.

The CHAIRMAN. On your own what?

Mr. SHAPLAND. On my own company's experience. I do not even look at those tables. I do not care about them.

The CHAIRMAN. These are the Society of Actuaries tables?

Mr. SHAPLAND. Right.

The CHAIRMAN. You go strictly on your own company's?

Mr. SHAPLAND. Right. We contribute to those studies. I am on the committee of the society that works on publishing those tables, but I have never looked at them.

The CHAIRMAN. How come?

Mr. SHAPLAND. Because my company has credible statistics and my company has to live and die by its own statistics not by what the industry uses.

The CHAIRMAN. Let me ask you. You have heard the testimony before. Is it true that there are dozens of different ways to categorize groups and there are actuarially sound ways to do it? Blacks live less than whites. Mormons live longer than non-Mormons. Are those all valid figures?

Ms. WALTERS. There are certainly many characteristics and many factors which in fact are used as rating variables for different types of insurance coverage. That is a fact.

The CHAIRMAN. But come back. Do blacks live shorter than whites, or do whites live longer than blacks on the average?

Mr. KNOWLES. Certainly there is a wide body of historical data showing higher mortality rates or different mortality rates between whites and nonwhites. However, a number of results, or there is a lot of data to suggest that those differences are not based on inherent differences in death rates between whites and blacks but rather relate to differences in socioeconomic status or other variables which in fact have a high correlation by rates.

For example, the National Vital Statistics Division did a study where it divided population data by socioeconomic class, and when the mortality of white men, for example, was compared against a total mortality within each socioeconomic class, the difference in death rates between races which showed up in the overall averages largely disappeared.

The CHAIRMAN. But would this not also be true with men and women, then?

Mr. KNOWLES. No.

The CHAIRMAN. Well, in that case why in some countries do women die before men on the average and in other cases they live longer? Why over the years in this country has the mortality rate been as close as 1 year apart and then spread to 7? If it is genetic, it ought to be very consistent worldwide.

Mr. KNOWLES. In fact, certainly the data I have looked at is that it is quite consistent worldwide, certainly within industrialized nations.

The CHAIRMAN. Well, you have just put a qualification on it. In most of the nations of Africa that are not industrialized, that is not true.

Mr. KNOWLES. Well, two things there. One, we sell very little insurance in Africa.

The CHAIRMAN. Well, but I mean if it is genetic, there is a certain common characteristic of women around the world, I would think.

Mr. KNOWLES. I would stand by my statement that the preponderance of available data—such data as high rates of miscarriage with male fetuses versus female fetuses, a widening of the gap between the male and female mortality over this century, as there has been some progress in eliminating socioeconomic differences between men and women.

The CHAIRMAN. Well, is what you are saying that you do not discriminate on blacks versus whites because the real basis for the discrimination is not black versus white but socioeconomic and that ought to be the basis of discrimination, if you are going to do it?

Mr. KNOWLES. No. I guess it was best put, I felt, in a study conducted by Deborah Lee Weingard under a National Center for Health Services research grant trying to examine the very questions you are asking: Whether if you look at different characteristics such as smoking, alcoholic consumption, and so on, you could find an underlying reason for different mortality rates by sex, other than sex.

One of the characteristics she looked at was race, and the conclusion was that race is no longer a significant predictor of mortality. So I would stand by the statement that the best available current data leads me to conclude that sex is a useful, in terms of predictability, predictive value of risk classification variable. Race is not.

The CHAIRMAN. What about the figure I have seen mentioned? It was not mentioned in the oral testimony but it was in the written testimony several times, that 86 percent of the men and women are going to die at the same age?

Mr. KNOWLES. That kind of a matchup is accomplished by matching men and women who die on the same date in a particular

group, not by matching them by order of death. The result of that is—

The CHAIRMAN. You lost me.

Mr. KNOWLES. What the matchup does is take each woman and try to find a man in this hypothetical population who would die on the same day. It does not take the first woman to die and match her up with the first man to die. The result of this matching by date of death is you may only have 15 percent who are unmatched, but they are 15 percent of the men that died very young and 15 percent of the women who died very old in the sense, let us say, a corporation which had its top 10 percent of its employees in terms of salary all male and the bottom 10 percent of its employees all female. You could really argue that there was no distinction in the experience between the two sexes because 80 percent of the men and the women could be matched up on the basis of salary.

Another example—

Ms. WALTERS. Senator, let me jump in here and see if I cannot help, too, because this overlap is something we hear so frequently, but it presents simply a false view and a distorted view of mortality or any kind of risk inferences. Let me take a very simple example.

Let us suppose we are talking about a group of smokers. I do not know exactly what the numbers are. I think it is safe to assume if you take a group of smokers that at least 90 percent of those smokers will not die or develop lung cancer or heart disease in the succeeding year.

The CHAIRMAN. The succeeding year?

Ms. WALTERS. That is right. At the same time, let us take a look at the group of nonsmokers. I think it is fairly safe to assume that 90 to 95 percent of the nonsmokers will not develop lung cancer or heart disease or die in the succeeding year. So then you have got a tremendous overlap of at least 90 percent between the smokers and nonsmokers. But yet no one is going to deny that there is a statistically higher risk of a group of smokers dying or developing lung cancer as there is in nonsmokers. It is simply the manner of presentation of the numbers that distorts the reality. That is all we are trying to say.

The CHAIRMAN. There are a number of States that have passed laws prohibiting discrimination on the basis of sex in insurance, are there not?

Ms. WALTERS. I believe there are four or five.

The CHAIRMAN. Do most of the insurance companies continue to operate there? Did they adapt themselves to it and work with it?

Ms. WALTERS. To the best of my knowledge, they do, Senator. I know you are going to be hearing from the insurance trade associations, property, casualty, and life, and health, and some of these questions may be better addressed to them who will defend the industry and industry practices, but we will certainly try to be responsive.

The CHAIRMAN. Your statement is that in terms of classification, discrimination—call it what you want—that the men/women discrimination is valid actuarially, but a distinction between blacks and whites is not statistically significant?

Ms. WALTERS. That is what our experts in the life insurance—I am the auto expert.

Mr. KNOWLES. I think the best way to put it would be that the classification by race in the pricing of insurance products would not be particularly useful in increasing the success of our predicting cost.

The CHAIRMAN. Again, on mortality you are saying that the figures that I have been given from time to time that blacks die before whites on the average is not valid?

Ms. WALTERS. I think what we are saying is it may mask a truer reality. That is, that the studies which have been done in the later years, the latest years, have shown that in fact there are other more direct factors which affect mortality other than race. In other words, race may have been a surrogate for other things which now are coming to the fore.

Mr. KNOWLES. The key phenomenon is that as you do studies to eliminate the effects of these other variables with blacks and whites, the effect is to bring the mortality rates closer together. As you try to eliminate these other differences—differences in occupations, smoking habits and so on—from women, the difference persists or even grows longer.

The CHAIRMAN. Let's move on to Mormons. Statistically they live longer than non-Mormons. I assume your answer to that is that they probably live a cleaner life historically. They do not smoke. They do not drink. They are in better physical trim and that is the reason they live longer rather than non-Mormons?

Mr. KNOWLES. It is certainly a plausible explanation. I have not done a detailed study of Mormon life, in fact.

The CHAIRMAN. So to the best of your knowledge, the only justifiable statistical difference is men and women?

Mr. KNOWLES. Oh, no; there are other justifiable statistics and statistics that are used by the industry—age; smoking habits; health history, particularly in the case of disability insurance; occupation.

The CHAIRMAN. And you sell insurance on that basis? If you do not smoke, you pay a different rate than if you do smoke?

Mr. KNOWLES. As the Academy of Actuaries, we do not sell any insurance.

The CHAIRMAN. No, no. I understand that. I was talking about the industry.

Mr. KNOWLES. There are 2,000 insurance companies using a wide variety of risk classification practices and pricing and strategies.

The CHAIRMAN. Let me ask you this as actuaries. If we decide as a matter of public policy that even if the statistical difference between men and women is a valid statistical difference, it is not a wise social policy, why should not we pass this legislation?

Ms. WALTERS. Senator, this is not for us to decide.

The CHAIRMAN. No; it is for us to decide.

Ms. WALTERS. This is for you to decide, yes.

The CHAIRMAN. That is a decision that we have to make.

Ms. WALTERS. That is correct.

The CHAIRMAN. Assuming we accept your statistics that there is a valid scientific difference in terms of mortality or morbidity between men and women, is there anything wrong with this Congress

saying, despite that as we do in social security, we think that there should not be a differentiation in benefits? Is there anything wrong with that?

Ms. WALTERS. Senator, there is nothing wrong with that at all. The reason we wanted to testify today was simply to provide you with more information and more knowledge about what the economic consequences would be so that it would be recognized that there are some costs attached to it and then good public policy is made in recognition of what the consequences are.

The CHAIRMAN. Interestingly, as you see from the witness list, almost every women's group I know supports this. They have good statisticians and they are bright groups and they are fully aware of the costs and fully prepared to accept the costs. They are saying as a matter of social policy we think from the standpoint of women it is an unwise policy to have the distinction.

Ms. WALTERS. That may be, Senator, but I detect a little bit of perhaps we could call it failing to communicate between different groups.

For example, Senator Hatfield this morning spoke about the economic plight of many women and that times are tough for all of us. That, to me, is not inconsistent with, but must be weighed against the fact that perhaps we are going to be asking women to have to pay more for insurance in the long run, not less. It is simply a judgment choice which has to be made.

The CHAIRMAN. Let me ask you—go ahead.

Mr. KNOWLES. Also in this overlap theory or overlap analysis that has been presented, I think there may be some misunderstanding about how insurance is priced or how costs emerge out of an insurance system. Professor Laycock gave a good explanation of that.

The CHAIRMAN. Let me go back to the only experience I have had in this Congress before. That was with the credit because, as I said, I was on the committee when we did it. The arguments were raised then that women as a class, especially divorced women, were a worse credit risk than men and therefore justified the discrimination.

They came forth with statistics proving how many divorcees went bankrupt and could not pay their bills. We just finally said that may or may not be true, but it is unfair to have that discrimination.

I am curious, Miss Walters, if you in the credit area would agree with the conclusion we came to, regardless of what the statistics may have been.

Ms. WALTERS. Yes, sir, I would, most certainly. I would also point out that there may be some differences. There may be some differences between that example and this example. This goes back to one of the things I said a little bit earlier about when you are dealing with insurance you can never divorce yourself from using averages. So those who will debate the use of a rating variable as being inappropriate because it applies averages to individuals really do not offer a solution to that philosophical problem.

The CHAIRMAN. Again go to the legislature on the redlining. In the using of averages, the argument of the insurance industry was that more houses within the redlined area are likely to be burgled

than those outside on the average, and they present the statistics to show it. But that was not a sufficient argument to justify redlining in our minds.

Ms. WALTERS. I am not going to try to defend redlining or acknowledge that it exists or does not exist. As I said, the folks who follow after us can do that. The point I think I was trying to make was that in certain sets of circumstances you can measure with a greater degree of certainty the individual's whether you call it performance, capability, individual attributes to determine whether that individual should be granted or denied a promotion or what have you. You have objective tests that can be used.

If they are physical tests, the most obvious example. If you are hiring someone to do a lot of lifting, that person has to be able to lift the amount of weight. You can determine that in advance. So the very fact that all women on the average cannot lift 100 pounds does not justify not granting that job to a women who can lift that amount.

So there are differences in different areas. With insurance, the problem is we do not know in advance, no matter what group you are talking about, who will be the people who will die tomorrow or next week or who will have the auto accident next week. We have to go with the averages. That is all we have.

The CHAIRMAN. Whereas with credit, if you wanted to spend the time—one of the arguments was cost—that it was just easier to say all women are likely to be a bad credit risk. But if indeed you sat down and you said: All right, what kind of a job do you have, how much money does it pay, how long have you worked there, you indeed could make a distinction between men and women.

Ms. WALTERS. Exactly. They were using that as a simple surrogate for the other things which more directly affect credit rating.

The CHAIRMAN. Thank you very much. That was very worthwhile. I appreciate it.

Ms. WALTERS. Thank you.

[The statement follows:]

STATEMENT OF AMERICAN ACADEMY OF ACTUARIES, COMMITTEE ON RISK CLASSIFICATION

INTRODUCTION

In August 1980, the American Academy of Actuaries ("Academy") was asked by the House Subcommittee on Consumer Protection and Finance to undertake a study of the economic impact of H.R. 100 (a House bill with provisions nearly identical to those of S. 2204). Following that request, the Academy's Committee on Risk Classification began a study of the economic impact of H.R. 100.

That study was completed in the spring of 1981, and was presented in summary form on May 20, 1981 to the House Subcommittee on Commerce, Transportation and Tourism in conjunction with hearings on H.R. 100. The summary was followed by a detailed report supporting the study's conclusions, which was filed with the House Subcommittee on July 29, 1981. A copy of both the summary and the detailed report has been previously provided to this Committee.

Because the relevant (in terms of economic impact) provisions of S. 2204 are identical to those of H.R. 100, the Committee on Risk Classification believes the conclusions reached under the H.R. 100 study are equally applicable to S. 2204.

This report then summarizes briefly our analysis of the economic impact of S. 2204. Our assessment of the bill's impact should be considered approximate rather than precise. No study of the potential impact of such far-reaching legislation can accurately gauge the practical effects of implementing regulations, marketplace re-

actions, judicial interpretations, etc. Nevertheless, we can give you a general assessment—our best judgment as to the probable impact.

The American Academy of Actuaries is a professional association of actuaries which was formed in 1965 to bring together into one organization all qualified actuaries in the United States and to seek accreditation and greater public recognition for our profession. The Academy includes members of three founding organizations—the Casualty Actuarial Society, the Conference of Actuaries in Public Practice, and the Society of Actuaries. A more extensive description of the Academy as well as further elaboration on the Committee on Risk Classification is set forth as appendix to this statement.

The following report is divided into two general parts: (1) major conclusions and (2) a specific analysis of the economic impact of S. 2204.

MAJOR CONCLUSIONS

1. Many aspects of S. 2204 would have little economic impact—specifically, provisions relating to race, color, religion, and national origin; and provisions relating to the availability of insurance without regard to sex.

2. Provisions relating to pricing differences by sex and the mandating of pregnancy benefits would have some significant effects. The impact on individual insurance consumers varies by type of insurance and depends on individual circumstances. The effects on individual male and female purchasers is summarized in the following table:

PERCENT CHANGE IN PRICE

Type of insurance	Increase (+) or decrease (—)					
	Male age 20	Male age 40	Male age 65	Female age 20	Female age 40	Female age 65
Life insurance	—2	—3	N/A	+6	+11	N/A
Health insurance:						
Medical expense:						
Unisex rating	+18	+13	0	—12	—7	0
Full maternity	+38	+1	0	+26	+1	0
Total	+56	+14	0	+14	—6	0
Disability:						
Unisex rating	+4	+2	0	—26	—21	0
Full maternity	+20	—	0	+20	—	0
Total	+24	+2	0	—6	—21	0
Automobile insurance	—20	0	0	+37	0	0
Individual annuities	+6	+6	+6	—6	—6	—6

3. Extrapolating from individual effects to totals of insurance in force, we project the following total annual dollar impact:

[In millions of dollars]

Type of insurance	Increase (+) or decrease (—)	
	Aggregate annual cost impact on men	Aggregate annual cost impact on women
Life insurance	—\$360	+\$360
Health insurance:		
Medical expense:		
Unisex rating	+69	—69

Type of insurance	Increase (+) or decrease (-)	
	Aggregate annual cost impact on men	Aggregate annual cost impact on women
Full maternity	+ 82	+ 85
Total	+ 151	+ 16
Disability:		
Unisex rating	+ 37	- 37
Full maternity	+ 57	+ 7
Total	+ 94	- 30
Automobile insurance	- 700	+ 700

4. The impact on pension plans would most likely be to mandate benefit increases to women under defined contribution type plans, and to men in certain circumstances under defined benefit type plans. It is not clear to us whether men or women would gain more in pension benefits from S. 2204.

5. Implementation costs would be approximately \$1.3 billion. The longer the period allowed for implementation, the smaller would be the marginal implementation costs. The 90-day implementation period called for by the bill is not possible at any cost.

6. Much of the immediate implementation costs could be avoided by having S. 2204 affect future insurance contracts only.

7. Most of the economic effects of S. 2204—both direct costs and potential marketplace disruptions—could be avoided by prohibiting only those sex-distinct pricing differences which are not supported by statistically demonstrated cost differences.

ANALYSIS OF ECONOMIC IMPACT OF S. 2204

A. Overall approach

Insurers do not now generally differentiate in insurance pricing or availability on the basis of race, color, religion, or national origin. Insurers also do not generally differentiate between the sexes as to the availability of insurance. The greatest effect of S. 2204, therefore, would be the prohibition of differences between the sexes in the pricing of insurance, and we have confined our analysis to the economic impact of that prohibition and to the mandating of full maternity benefits in all health policies. In our view, the economic impacts of the other aspects of S. 2204 are not significant.

There are four areas of major potential impact:

- (1) Changes in insurance costs to individuals;
- (2) "Ripple" effects on private insurance markets;
- (3) Financial effects on the insurers (both insurance companies and other insurers);
- (4) The administrative costs incurred in implementing S. 2204.

We have examined these effects separately for four major types of insurance—life insurance, health insurance, casualty and property insurance, and retirement insurance (i.e., pension plans). There are significant differences between the risks covered by these types of insurance, in the way sex is used in pricing, and in the way the insurance is sold or otherwise provided to the consumer. Consequently, the impact of S. 2204 on each type is different.

B. Changes in Individual Insurance Costs

Much of the insurance coverage in this country is provided to individuals through group plans. For example, at least 75 percent of private hospital/medical insurance to those under age 65 is on a group basis. Virtually none of the property-casualty coverage (automobile insurance in this context) is provided on a group basis. Except for group pension plans, where the impact of S. 2204 is somewhat complicated, the effect of S. 2204 on the insurance costs paid directly by individuals covered under group plans or on the size of their benefits would be negligible. Consequently, our analysis of the impact on individual pocketbooks pertains largely to insurance sold directly to individuals—i.e., not through group plans.

For some types of insurance, S. 2204 would cause women to pay less and men more; for other types men would pay less and women more. The impact of S. 2204 on any particular individual or family would vary widely according to the particular insurance coverage involved and the particular circumstances of the persons insured—in addition to their sex. Broadly, however, the average effects are summarized in the following table.

PERCENT CHANGE IN PRICE

Type of insurance	Increase (+) or decrease (-)					
	Male age 20	Male age 40	Male age 65	Female age 20	Female age 40	Female age 65
Life insurance	-2	-3	N/A ¹	+6	+11	N/A ¹
Health insurance:						
Medical expense:						
Unisex rating	+18	+13	0	-12	-7	0
Full maternity ²	+38	+1	0	+26	+1	0
Total	+56	+14	0	+14	-6	0
Disability:						
Unisex rating	+4	+2	0	-26	-21	0
Full maternity ²	+20		0	+20		0
Total	+24	+2	0	-6	-21	0
Automobile insurance ³	-20	+0	0	+37	+0	0
Individual annuities ⁴	+6	+6	+6	-6	-6	-6

¹ Relatively little life insurance is sold on an individual basis to people age 65.

² This is the impact of requiring full maternity coverage (i.e., coverage for normal pregnancies and deliveries, as well as coverage for complications of pregnancy).

³ Effects shown are for men and women who are principal drivers of the insured car.

⁴ Some insurers now charge women between the ages of 30 and 64 who are the sole operators of their cars approximately 10% less than similarly situated men. The price of auto insurance for these women would increase slightly but the impact is difficult to predict and would be small in any event.

⁵ Payments commencing at age 65, with refund features.

Extrapolating these individual effects to totals of insurance in force, we project the following total annual dollar impact:

[In millions of dollars]

Type of insurance	Increase (+) or decrease (-)	
	Aggregate annual cost impact on men	Aggregate annual cost impact on women
Life insurance	-\$360	+\$360
Health insurance:		
Medical expense:		
Unisex rating	+69	-69
Full maternity	+82	+85
Total	+151	+16
Disability:		
Unisex rating	+37	-37
Full maternity	+57	+7
Total	+94	-30
Automobile insurance	-700	+700

C. Effect on Pension Benefits

The impact of S. 2204 on pension plans would be somewhat different. Most pension plans are provided through employer sponsorship; ERISA regulations, collective bargaining agreements, and paragraph (c)(2) of Section 4 of S. 2204 make it likely that the major effect of S. 2204 on pensions would be a mandated increase in benefits for either men or women—depending on the specifics of the plan.

In general, periodic payments to women would increase under defined contribution plans.

Under the more prevalent defined benefit plans, the effects would be mixed. In these plans, standard benefits at normal retirement age for similarly-situated man and women are identical; however, benefits at early retirement and most optional forms of benefits are often higher for women. Therefore, in plans which now use sex-differentiated option and early retirement factors, S. 2204 would require benefits at early retirement and benefits elected in most optional forms of payment to be increased for men.

The cost of the increased benefits in both types of pension plans would be significant—approximately \$5.5 billion per year in mandated extra benefits for all plans combined. It is not clear to us how much of the additional \$5.5 billion per year would accrue to men and how much to women; further study would be needed to gain some insight into this question.

D. Administrative implementation costs

These are the costs involved in such activities as establishing new "unisex" rates, amending insurance policies and contracts, changing computer programs and other systems and procedures, and recalculating benefits where necessary. The administrative cost impact depends very heavily on the time frame mandated for implementation. The 90-day implementation period called for by S. 2204 is simply not possible at any cost. In view of the amount of internal work insurers would have to perform and the extensive state regulatory filings required, a longer implementation period would allow the changes to be made largely in the context of normal product updating cycles. We have analyzed in our report the approximate administrative cost for a timetable midway between the impossibly short and the low-impact long—a 2-3 year lag between passage of the bill and its effective date. These costs are summarized as follows:

Type of insurance:	In millions
Life insurance	\$870
Health insurance	200
Casualty and property insurance	75
Retirement plans	200
Total costs	1,345

One way to reduce the administrative costs would be to have S. 2204 affect insurance contracts issued only after its effective date. The retroactive features of the bill generate much of the administrative implementation costs, since those features require revisions to millions of outstanding insurance policies and contracts.

E. Marketplace Effects

The impacts of S. 2204 on insurance markets are very difficult to predict and impossible to quantify precisely. Mandated changes in pricing practices often have unexpected effects, and, although these effects are not entirely quantifiable, they are nonetheless potentially very significant and worthy of consideration. Here are some of the more important possible effects, summarized very briefly:

A. An increase in the average price of insurance in general, as insurers are forced to take on the additional risk that the sex distribution of those insured will be different from what is assumed in pricing, among other things;

B. Increased emphasis on selling insurance for the arbitrarily overpriced risks, along with possible steps to avoid selling insurance for risks that are known to be relatively under priced;

C. Increased regulatory efforts and costs to assure equal availability of coverage, especially to those for whom insurance prices are arbitrarily reduced;

D. The search for new classification factors or product modifications, which may have the effect of differentiating risks by sex;

E. Diversion of resources to the implementation of unisex rating, at the expense of new insurance product development efforts or investigation of other new pricing techniques.

F. Financial Effects on Insurers

It is important to note that the "insurers" affected by S. 2204 include not only private insurance companies but also organizations which "self-insure," through specially established trust funds or other means. Among others, "insurers" in this context include various levels of government—federal, state, and local—and a variety of other self-insurers, in many cases pension or welfare funds established through collective bargaining agreements.

While S. 2204 allows for changes in prices, it also stipulates that benefits may be increased but may not be decreased. This stipulation could have particularly serious adverse consequences to the insurers of retirement plans—not just insurance companies but also all other "insurers." The extra money required to increase retirement benefits to men or women, depending on plan specifics, would have to come from somewhere—additional appropriations in the case of many pension plans for government employees, additional contributions from employers or their employees in the case of private sector plans, etc.

CONCLUSIONS

From our analysis of this particular legislation, we draw several general conclusions:

1. S. 2204 would have a significant economic impact if enacted.
2. The effect on individual insurance consumers would differ according to their individual circumstances and according to the type of insurance coverage involved. On balance, it appears that women as a whole would pay *more* for insurance (life, health, and automobile) if S. 2204 is enacted.
3. The effect on pension benefits is unclear. S. 2204 will mandate increases in benefits. Under defined contribution plans, women's benefits would increase; under most defined benefit plans, early retirement benefits and optional forms of benefits for men would increase.
4. The 90-day implementation period stipulated is not practical. The longer the implementation period, the smaller would be the additional implementation costs.
5. Much of the immediate administrative costs could be avoided by having S. 2204 affect only insurance contracts issued or renewed on or after the act's effective date. The other economic effects would still be felt, some to a lesser degree.
6. Virtually all of the economic impact could be avoided by changing S. 2204 to prohibit only sex-distinct pricing which is not supported by statistically demonstrated cost differences.

Congress, the courts, and the public must at some point decide what are fair practices in the context of insurance. There are no objective tests which can differentiate with certainty an individual's insurance risk from that of a group with similar risk characteristics. It is precisely this uncertainty that leads to the need for insurance. Therefore, some aspects of fair practices applicable in other contexts may not be appropriate or possible in the insurance context.

It is generally the position of the actuarial profession that insured individuals are treated fairly if they are charged prices which reflect the value of the risks they transfer to the insurance pool—not simply as a matter of theoretical preference but as an important condition to the sound operation of insurance programs. Determining the value of the risks transferred necessarily involves the use of averages and classification variables, making the use of averages and class groupings essential to insurance. Consideration of what is fair or unfair in insurance should take place within that conceptual framework.

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APPENDIX A

BACKGROUND INFORMATION ON THE AMERICAN ACADEMY OF ACTUARIES

The American Academy of Actuaries is a professional association of actuaries which was formed in 1965 to bring together into one organization all qualified actuaries in the United States and to seek accreditation and greater public recognition for the profession. The Academy includes members of three founding organiza-

tions—the Casualty Actuarial Society, the Conference of Actuaries in Public Practice, and the Society of Actuaries. The Academy serves the entire profession. Its main focus is the social, economic, and public policy environment in which the actuarial profession functions. Its primary activities include liaison with federal and state governments, relations with other professions, public information about the actuarial profession and issues that affect it, and the development of standards of professional conduct and practice.

Over 6,600 actuaries in all areas of specialization belong to the Academy. These members are employed by insurance companies, consulting actuarial firms, government, academic institutions, and a growing number of industries. Actuarial science involves the evaluation of the probabilities and financial impact that uncertain future events—birth, marriage, sickness, accident, retirement, and death—have on insurance and other benefit plans.

Membership requirements can be summarized under two broad headings: education and experience. At present, the education requirements can be satisfied either by passing certain professional examinations sponsored by the Casualty Actuarial Society or the Society of Actuaries, or by becoming an enrolled actuary under the Employees Retirement Income Security Act of 1974 (ERISA). The experience requirement consists of three years of responsible actuarial work.

COMMITTEE ON RISK CLASSIFICATION

This Committee has the responsibility for keeping the membership of the Academy advised of major developments relating to risk classification that affect retirement plans, welfare plans and insurance, both governmental and private. It may also conduct or sponsor research on issues related to risk classification. It will also prepare reports, as appropriate, on such issues for dissemination to the membership and for submission to appropriate organizations, both governmental and private.

The CHAIRMAN. We will now move on to the property casualty panel: Mr. George Bernstein, Miss Sally Kirkpatrick, Mr. Robert Hunter, and Mr. Sanford Squires.

Mr. Bernstein, do you want to go first?

STATEMENTS OF GEORGE BERNSTEIN, AMERICAN INSURANCE ASSOCIATION; SALLY A. KIRKPATRICK, GOVERNMENT AFFAIRS REPRESENTATIVE, ALLIANCE OF AMERICAN INSURERS; J. ROBERT HUNTER, PRESIDENT, NATIONAL INSURANCE CONSUMER ORGANIZATION; AND SANFORD SQUIRES, VICE PRESIDENT, COMMERCIAL UNION INSURANCE CO.

Mr. BERNSTEIN. Thank you, Senator. As you indicated, the full statement would be in the record, and I will not even summarize, either. I will address myself, at least in part, to the last question you posed to Mavis Walters and then get into some more of my other points.

You asked, if the Congress as a social judgment decides that, regardless of the merits of statistical rating and cost-based pricing, sex-based classification has no place in American society, is there any reason not to enact the legislation? I would say, absolutely there is reason not to.

The CHAIRMAN. There is?

Mr. BERNSTEIN. Absolutely. Unless the Congress has the money to follow up the bill it sends the American public when it passes this legislation, it is acting irresponsibly. This legislation has real costs. It redistributes the costs of insurance, not necessarily to insurance companies, although in different types of insurance there will be impact on insurers, and to the extent there is any retroactivity in life insurance, it could bankrupt life insurance companies.

If you talk about short-term coverages like auto insurance, which are 1-year or 6-month policies, you are talking about redistributing

the premium dollars. Who is going to pay the \$700 million a year that women will have to pay that they are not paying today? There is a \$700 million a year bill attached to this legislation. Women will have to pay an additional \$700 million a year for auto insurance and nobody disputes it.

So you say, why are women's groups supporting this legislation? Why are they in here? I cannot answer that, unless the ideology of this legislation is more important than the cost.

I would submit that if the costs of this legislation were known, if the television cameras and if the coverage of the press made known the cost to the people, you would see a different distribution of people in this room.

[The statement follows:]

STATEMENT OF GEORGE K. BERNSTEIN ON BEHALF OF THE AMERICAN INSURANCE ASSOCIATION

I am testifying on behalf of the American Insurance Association (AIA), which represents 168 property/casualty insurers writing automobile insurance throughout the United States. The AIA strongly opposes enactment of S. 2204.

S. 2204 would preempt state regulation of insurance by purportedly "prohibiting discrimination in the writing and selling of insurance". The bill would prohibit the use of sex-based rating classifications. Ostensibly, the bill also addresses race, color, religion and national origin, but as there is no evidence that insurers discriminate in these areas, or that state statutes and regulations do not already effectively proscribe such illegal discrimination, it is apparent that the bill is really addressed to the issue of sex, which, with few exceptions, is a valid risk classification under state laws.

However well intentioned, S. 2204 would actually mandate and institutionalize unfair insurance practices. In the name of fairness, the bill would deny both men and women the benefits of their own loss experience and life expectancy.

This unfortunate result comes from attempting to change the insurance mechanism into an instrument of social policy from what it has always been—a means of spreading risk by neutrally reflecting actual experience and establishing premiums on the basis of reasonably anticipated losses.

Under S. 2204, the federal government would regulate key aspects of insurance, thus repealing much of the McCarran-Ferguson Act reservation of such authority to the states. The hearing notice cites federal action in the areas of housing, employment and credit, and asks "Why should we tolerate discrimination in insurance?"

The answer is that discrimination is the very essence of insurance underwriting, ratemaking, coverage and benefits. Discrimination in these aspects of insurance is not only unobjectionable, it is desirable and necessary, and without it private insurance could not exist. Every classification, in all insurance, whether based on sex, age, health, driving record, fire resistance, safety devices or employment hazards, involves discrimination. All premiums are predicated on discrimination, and without it, policyholders would pay the same rate regardless of their risk characteristics.

Unlike other fields where cost is known when price is set, insurance requires projections into the future and insurance classifications involve best effort attempts to group risks with similar characteristics in a manner that reflects experience and correlative expectations. These classifications and the rate differentials reflected in them are subject to frequent amendment to reflect new developments, and are subject to continued regulatory review.

All classifications, by definition, involve drawing lines. Classifications are neither suspect nor invalid merely because 100 percent of those within a class do not develop identical experience, or because some insureds in different classes develop identical experience. To criticize classifications because overlap exists is to deny the validity of the most basic actuarial exercise. One would no more ban an automobile insurance classification because all women in the class do not have the same losses or because some of these women have the same loss experience as men who are separately classified, than one would prohibit the use of age classifications in life insurance because all 50 year olds do not die at the same age or, conversely, because some 50 year olds and some 70 year olds die at the same time.

Insurance statutes have always recognized the nature of classifications and that discrimination is an integral part of insurance, and, accordingly, have used the

phrase "unfair discrimination" to distinguish prohibited activities. This distinction between discrimination and unfair discrimination is essential to an understanding of insurance, but it is missing in S. 2204.

As a result, S. 2204 would require insurers to violate both basic principles of insurance and state insurance laws, and would, in the name of federal social policy, redistribute premium costs in clear contradiction of actual loss experience.

S. 2204 would unfairly force women to pay \$700 million a year more for auto insurance, although they cause far fewer losses than men; it would unfairly force women to pay more for life insurance although they live longer than men, and today pay a commensurately lower premium over a longer period; it would unfairly force men to pay more than their fair share for annuities so that women can receive higher monthly benefits, although women live longer and will receive these payments for a longer period than men; it would unfairly require men and women to pay the same amount for health insurance although the use of health care services and their cost vary significantly, depending on the sex of the insured.

If insurers were arrogant enough to ignore experience and valid classifications based on the principle of discrimination, not only would state insurance laws be violated and the vast majority of insurance purchasers become indignant, but Congress would be quick to take notice. Yet this legislation mandates exactly the arbitrariness that would be met with outrage if insurers dared propose it.

No one denies that women have fewer and less serious driving accidents than men. Nevertheless, in imposing a \$700 million a year penalty on women, S. 2204 would demand that we make believe these differences do not exist. It may be useful, therefore, to recite a few basic and uncontroverted facts that demonstrate the fairness of sex based classifications, and which S. 2204 either overlooks or ignores:¹

(1) Male drivers have almost one and one-half times as many accidents as females.²

(2) Males under 25 years of age have more than one and one-half times as many accidents as young females.³ New York State motor vehicle statistics show young male drivers with more than twice the accidents of young females.⁴

(3) In number of claims, average loss per claim and average loss per car, young single males have significantly worse experience than young single female drivers in all three auto insurance coverages—liability, collision and comprehensive. The overall loss per car for these males is 59 percent higher than for the females.⁵

(4) Similar studies show equally favorable experience for female drivers with respect to violations and major convictions.⁶

(5) Male drivers are involved in more serious accidents and, as shown in a study covering 17 years, in more than twice as many fatal accidents as females.⁷

(6) Even after breaking down the loss experience by miles driven, women had lower accident frequency than men for every mileage category.⁸

These are facts, not myths. These are hard statistics on which insurers risk their policyholders' surplus and their stockholders' equity. They are neither guesswork nor prejudice and are certainly not the product of some nefarious conspiracy by insurers to benefit men at the expense of women.

The absurdity of any claim of anti-female bias by insurers should be evident even to those who choose to ignore driving and accident experience. Existing auto insurance rates already benefit women by translating their better loss experience into dollar savings. It is S. 2204 that would unfairly discriminate against women by forcing them to pay \$700 million more a year by prohibiting insurers from recognizing their safer driving experience!

Moreover, S. 2204 ignores its impact on the overall operation of the auto insurance market. S. 2204 can mandate what it will, but as long as women have better accident experience than men and everyone knows it, the market will react accordingly. If women are overpriced because of S. 2204 and men are underpriced, female

¹ I attach testimony I gave before the State of New Jersey Department of Insurance, Hearing on Automobile Insurance Classifications and Related Methodologies, March 16, 1979, that discusses these issues in greater detail. (Retained in committee files.)

² 143 percent, "Study of California Driving Performance," 1970, California Insurance Department.

³ 157 percent, *ibid.*

⁴ "Motor Vehicle Statistics," 1979, New York Department of Motor Vehicles.

⁵ Insurance Services Office.

⁶ "Study of California Driving Performance," *supra*; "Michigan Driver Statistics," 1980, Michigan Department of State; "Accident Analysis and Prevention," 1970, Harrington and McBride.

⁷ 202 percent, "Accident Facts," 1979, National Safety Council.

⁸ "Effects of Exposure to Risk on Driving Record, 1973," U.S. Department of Transportation, 1973 "California Driver Fact Book," 1976, California Department of Motor Vehicles.

drivers will be avidly sought and male drivers avoided. Underwriting decisions are made on the basis of real world statistics.

The Massachusetts auto insurance market shows what can be expected if S. 2204 becomes law. In 1977, the Massachusetts insurance commissioner prohibited the use of sex-based auto insurance rates in the state. Since then, the market has deteriorated to the point where almost one out of every two drivers is forced to find insurance in the involuntary facility.

It is bad enough to disregard insurance principles, facts and history, as well as to preempt state regulatory laws. It is even worse to legislate with cavalier disregard for the financial costs imposed on individuals, business and state and local governments throughout the United States. If Congress is prepared to rewrite the most basic elements of insurance as proposed in S. 2204, it also has the responsibility to hold harmless the victims of its rhetoric.

S. 2204 would force women drivers to pay a \$700 million surcharge for auto insurance each year. Is Congress prepared to hold these women harmless by appropriating this amount? Would Congress admit to the taxpayers why they were being required to pay these costs every year?

With respect to life insurance, is Washington prepared not only to throw out mortality tables and preempt the states on insurance pricing, but also to tell women, despite their greater longevity and their payment of premiums for more years than men, that they must pay more each year because of S. 2204 is acting out a fantasy that men and women have the same life expectancy? Is Congress ready to accept the resultant financial consequences of reducing men's premiums, which will either cause significant increases in women's rates or endanger the solvency of life insurers with long term obligations based on assumptions of higher premiums? Will Congress appropriate the monies to hold harmless these victims of S. 2204?

In the area of annuities, S. 2204 imposes upon employers, large and small, the added multi-billion dollar costs of revising annuity values and option factors to incorporate the fiction that men and women live the same length of time. These costs of subsidizing additional monthly benefits for women over their longer lifetimes will have to be borne by public and private retirement systems and their participants throughout the United States. In New York State alone, S. 2204 would cost public retirement systems an added \$2 billion in unfunded liabilities. Particularly at a time when increasing numbers of state and local governments are in financial straits, facing reduced assistance from Washington, is Congress prepared to impose these costs? Or does Congress intend to appropriate the billions of dollars necessary to hold harmless these victims of S. 2204?

Legislation should be based on fact, not myth, and whatever the larger effort of which S. 2204 seems to be a part, the end does not justify the means. Measurable, verifiable and significant differences in loss experience between men and women do exist, and if insurers are to be fair to their policyholders, these differences must be reflected.

The enactment of S. 2204 would constitute more than a message from Washington that fairness has no place in insurance. Attached to that message would be a multi-billion dollar bill that will have to be paid by someone. Before Congress acts on S. 2204, it will have to determine whether, in addition to promulgating a system of unfair discrimination, it is ready to send the bill.

The CHAIRMAN. Do you think all those women's groups do not know those statistics?

Mr. BERNSTEIN. I do not think women generally know those statistics.

The CHAIRMAN. I am talking about the women testifying for the groups. Do you think they do not know this?

Mr. BERNSTEIN. Either the people do not know or the ideology of the legislation is more important than the dollar costs, which I consider a very dangerous position. To hear some of the testimony this morning, it is almost frightening; it is almost as if there is a war going on between men and women; it is almost as if insurance companies have made up their rating structure to hurt women.

That is not true. In fact, in auto insurance today women are \$700 million a year better off than men. There is no dispute about that. It is no bias. It is a fact. It is a fact nobody disputes. Yet we have

this legislation presented as if it is going to reverse a discrimination against women.

There are other costs of this legislation. There are costs in the annuity field. Certainly one must address not just retroactivity in a vacuum, but the definition of retroactivity. Is it effective on the date it is enacted as to people who enter the plan on that date? Is it retroactive to people who are already in the plan as of that date and may have been in for 20, 30 years and does such retroactivity cover past or future benefits? There is a big difference in terms of dollars.

This legislation, just counting New York State public retirement systems, creates a \$2 billion unfunded liability. I believe the actuaries gave a figure of something like \$5.5 billion overall costs in the area of pensions.

Who is going to pay that cost? Is Congress going to appropriate the money? Is there going to be a taxpayer surcharge to cover it? Or are public pension systems, particularly around the United States, going to go bankrupt because of the lack of that money? The money has to come from somewhere. Unless you get it from the men to fund the additional years of coverage for women, it has got to come from somewhere else.

Is Congress going to appropriate that money? Or are cities and States that are in dire financial trouble right now, who are receiving fewer benefits from the administration's legislation, going to be squeezed even more to pay these additional costs? Those are some of the reasons I think Congress should not pass this legislation.

The CHAIRMAN. I assume, then, based upon your assumptions, that social security is actuarially unsound because it does not distinguish between men and women.

Mr. BERNSTEIN. I am not making any assumptions on social security and I will not get into the debate as to whether or not it is sound or not. We know there are various discussions as to whether it is sound or unsound. But social security is not private insurance. It is not insurance written by stockholder owned companies on a private basis or by mutuals for policyholders. It is not State and local government, that do not have an unending pot to tap, that cannot shift moneys from general revenues, if worst comes to worst, to fund social security. States do not have that option. Cities do not have that option. Private insurers do not have that option. Working men and women do not have that option.

The CHAIRMAN. Then where is the answer? You are talking about just the costs. We went through this with equal credit. The banks said, it is going to cost us more if we cannot distinguish on the basis of men and women. We will have to look into their records and see which ones among the women are better credit risks.

Mr. BERNSTEIN. You asked the question, if Congress decides as social policy to reach the point you reached in credit, why should you not do it? I am saying you should not because the cost is totally different. It is not cost that is allegedly based on the cost to the creditor—and I have no idea of the validity of the statistics that went into the credit arguments are. I do know about the validity of the statistics that go into the insurance argument, and no one questions them. No one questions the added lifespan of the woman

versus the man. No one questions the fact that male drivers have far more accidents, far more serious accidents, far more fatal accidents, far more violations, and cost more to insure than women. There is no question about that.

I do not know what the facts were on the credit. I doubt that it was unquestioned that all divorced women have worse credit experience than men. But we are not faced with that here. Here we are faced with the advocates of this bill saying "ignore the facts." Not just ignore the impact, ignore the facts. I am saying that Congress, if it chooses to ignore the facts, must address the costs. I would also urge that you should not ignore the facts, and I would like to get into the factual argument about insurance itself.

Insurance is not the business of building houses, of selling real estate, of issuing credit. Insurance is probably the only area where you make rates prospectively. You must guesstimate as well as you can the cost of your product before you sell it, before you know it, and then live with the result. You either make money or you lose money, but you do not come to Congress for a bailout, you do not go to the State for a bailout. You have to live with the costs.

The CHAIRMAN. You are not the only industry that does that. A farmer does it every year when he plants wheat and hopes and guesses what the price is going to be.

Mr. BERNSTEIN. But he knows the cost of what he is spending to put into that product. He may not know if it will sell. He may not know if it will be successful.

But insurers do not even know the cost of their product and may not know it for 20 years, if you are talking about long tail lines like malpractice insurance or product liability insurance. You may not know it for 5 years if you are talking about automobile insurance.

The CHAIRMAN. Now let me ask you: What happens in these States that have passed the laws that you cannot discriminate on the basis of sex? Have the companies quit operating there?

Mr. BERNSTEIN. Let me give you Massachusetts as an example. Massachusetts decided clearly to ignore the statistics. The decision there that said we are going to do it admitted the validity of the statistics, admitted that women had better driving experience. What has happened since is that now almost half the drivers in the State of Massachusetts are not written voluntarily by insurers.

Why? Because of exactly what the previous panel said; namely, that when underwriters look at a risk and see that all of a sudden, because of some social policy of the State of Massachusetts, a woman is overpriced by "X" dollars, they are going to write as many women as they can. And if they know men are underpriced by "Y" dollars, they will avoid men like a plague. Therefore, many fewer men are written voluntarily today than before. The market in Massachusetts has been destroyed.

We do not know yet what the impact will be in states like Michigan, or in North Carolina that has always had a terribly destructive automobile situation.

There are a couple of companies that have voluntarily chosen to ignore sex-based statistics. God bless them. They have made an underwriting judgment and they can live with it. But the vast bulk of the thousand-odd insurance companies writing automobile insurance in this country have not chosen to follow them.

What this type of legislation overlooks is that insurance is a game of group statistics. Insurance is not made on the principle of individual statistics.

The CHAIRMAN. I want to ask you a question statistically, not social policy, so that I am sure I understand. Under social security two people work 40 years, a man and a woman. They each make \$20,000 a year. I take it under that system the woman is getting the better benefit than the man because statistically she will live longer and yet she is getting the same pension?

Mr. BERNSTEIN. That is right. That is right, and it is also irrelevant. There are also pension plans, as opposed to annuity plans, where you have exactly the same situation. Employers have chosen to absorb the additional cost.

But that is not true in the private insurance system. In the private insurance system, you pay your money, you get your benefit. And the tradeoff supposedly is for fairness, and that is why insurance laws have always distinguished between fair discrimination and unfair.

The CHAIRMAN. I want you to understand, then we will move on to Ms. Kirkpatrick, that when we had the hearings on equal credit, the American Bankers Association and the creditors said, if this is passed it will add significantly to the cost of processing loans for women and it will be to their detriment and it will cost significantly more for them to get credit. They believed it and they made that argument, and for all I know maybe it did.

But we went ahead despite it. But their cost argument really is the same one you are making: This will be a cost imposed upon those making the loans.

Mr. BERNSTEIN. I am saying the cost here is not upon those who sell the insurance, with the exception of the retroactive impact on life insurance. The cost is on the system, the retirement system. The cost is on the public.

The CHAIRMAN. Well, let me rephrase it. The cost is on those who make the loans, who would then pass it along to those who are receiving the loans, that is, women, and they would have to pay more, whether it be in interest or whatever else, they would have to pay more for credit because of the expense imposed upon the creditor.

Mr. BERNSTEIN. I say that is totally different from a piece of legislation like this, which says in so many words, women will pay \$700 million more a year more in automobile insurance.

Let us just take for a moment annuities and the equity argument. I can join you in an equity argument on credit. I cannot join you in an equity argument on annuities. Women live 4 or 5 years longer than men. You must pay those women each month the amount of their annuity for an additional 4 or 5 years. Who is going to pay that added monthly cost? Are you going to raise the price to men? Is Congress going to appropriate the money?

That is not the situation you have in credit. It is a very different situation.

The CHAIRMAN. Let me come back again, because I am looking at the statistical abstract of the United States, 1981. The average, at age 20 the life expectancy of a black is 67, of a white it is 72. And yet we do not make that distinction in the selling of insurance.

Who is paying the cost for the equality of the insurance? Who is picking it up?

Mr. BERNSTEIN. First of all with respect to the cost of unicolor tables, it is well known that when you started off with no sex discrimination in life insurance, very, very few blacks were purchasing insurance. So even if you made a mistake and even if you made a judgment that was for the right reasons, but regardless of cost, the cost of spreading that judgment was infinitesimal.

More important, that gap between black and white lifespan has closed. In fact, at a certain age blacks who survive then have a longer life expectancy than whites.

You do not have that with men and women. Women are a significantly larger percentage of all life insurance policyholders than blacks, and therefore, you will need much more money from women if you are going to eliminate the benefit to them of their currently lower premiums, because there is a larger gap to be made up if you intend to equalize men and women's premiums.

Second, the lifespan differential between men and women, contrary to that of blacks and whites, has expanded over the years. It has grown with all the advances of science, with all the pressures of society, with women in the work force. Despite all that, women are living longer in relation to men now than they were 10 years ago. It is a totally different situation.

The CHAIRMAN. You are saying that they are living longer than men than they were 10 years ago. You mean that the difference has expanded.

Mr. BERNSTEIN. The difference has expanded.

The CHAIRMAN. There is no evidence that is contradicted in any place in the industrialized world?

Mr. BERNSTEIN. I cannot speak generally of the industrialized world. I know that in terms of actual experiences and mortality tables that there is absolutely no evidence to the contrary.

The CHAIRMAN. Ms. Kirkpatrick?

Ms. KIRKPATRICK. Thank you for this opportunity to appear before you. I am Sally Kirkpatrick, government affairs representative of the Alliance of American Insurers, a major national trade association representing more than 150 insurance companies who write property and casualty insurance in all 50 States and the District of Columbia.

Were it not for the inclusion of sex discrimination, S. 2204 would address no practices whatsoever which are a day-to-day part of the insurance business. The race, color, religion, or national origin of a prospective policyholder does not enter in any way into a company's underwriting judgment or pricing system.

A person's sex, however, is a principal consideration if that person is a prospective automobile insurance policyholder, single and under 25 years of age. Everything else being equal, being a female makes that person a better risk entitled to lower insurance premiums.

Insurers price literally millions of risk exposures each year. In order to minimize subjective judgments, classification systems have been developed to group individuals sharing relatively similar risk exposures. This classification has a direct bearing on the price the individual must pay for insurance. Classification of insurance risks

has always been controversial. It is controversial because it seems to involve conflicts in social values which have not been resolved or perhaps fully recognized.

Nearly everyone agrees that insurance companies should charge each policyholder a premium based on objective evaluation of his or her risk exposure. The proposition has become controversial because it leads to charging higher premiums for some policyholders. When this happens, there are demands that pricing be based on social rather than actuarial considerations.

There are literally thousands of characteristics insurers may use for classification purposes. Insurance pricing, however, is based on the law of large numbers. For practical reasons, insurers must limit the criteria used for classification purposes to those that can be readily identified, those that are most objective in nature and those likely to have the greatest effect on risk exposure.

For purposes of automobile insurance, age, marital status, where the car is generally garaged, the use of the automobile, and sex have been identified as the most important criteria used in establishing the classifications.

Artificial manipulation of the classification system leads directly to the subsidization of one class by another. As policymakers attempt to force insurance companies to cease using valid classification criteria in the rating plans, they are forcing insurance companies purposely to misclassify certain insureds.

Such restrictions simply do not work. Insureds who are being overcharged for their insurance because they have been misclassified will be actively sought by competing insurance companies for their business. In turn, other insureds who also have been misclassified and who are not paying their fair share will be shunned. They will have to resort to the residual market mechanisms to secure their insurance protection.

Most of the attacks on the classification system in the past have been generated by those who believe they are paying too much for insurance. It is seldom that those who are paying less than average seek to have their classification status altered.

With regard to automobile insurance, the effect of S. 2204 would be an increase in the cost of insurance for those who are perceived to be discriminated against. Essentially if S. 2204 is enacted into law, the average automobile insurance rate for women will increase by 21 percent.

Statistical analysis has consistently justified the use of sex in auto insurance. In our statement for the record we have prepared a number of tables to illustrate the differences in male and female driving patterns.

Let me cite a few examples. In terms of the number of claims per vehicle for male and female drivers under age 25 for every coverage, liability, collision, and comprehensive, female drivers consistently have reduced exposure. If one compares the average dollar loss per claim and the average dollar loss per car, the exact pattern again repeats itself.

When all three coverages are combined, as they typically are in an auto policy, young single males generate losses 59 percent higher than young single females. The average loss per car for males is \$307.43 compared to \$193.92 for females. Noninsurance

data confirms that males consistently have more frequent and more severe automobile crashes than females. Essentially males have nearly twice as many accidents as young females. Men receive a greater number of citations. Men tend to be involved in more serious accidents. In 1980, male drivers were involved in more than twice as many fatal accidents as women. Men obtain drivers licenses at an earlier age. Men do more nighttime driving. Men tend to do the weekend driving. Male drivers are more likely to be impaired by alcohol. The list goes on and on.

Mr. Chairman, the use of sex as a classification factor in determining automobile insurance premiums has been reviewed time and time again. Today after extensive investigation and study, only 5 States, as you have heard before, have banned sex as a factor in pricing automotive insurance. Three of these five States have experienced unusual automobile insurance market dislocations.

If S. 2204 is enacted, the effect will be twofold.

First, it will require insurance companies to apply reverse discrimination in its pricing mechanism. It will prohibit the fair classification of younger females. Clearly younger women drivers present less risk exposure for insurance companies. There is nothing anatomical in the statistics and studies cited in this testimony. The reasons for the differences between male and female drivers are immaterial. The differences are there and younger females should benefit from the economic advantages to be derived from these differences. Failure to recognize these differences can only be labeled "unfair discrimination."

Second, S. 2204 will force young female drivers to pay considerably more for their auto insurance than they should reasonably be expected to pay by their risk exposure.

It will force insurance companies to lump younger drivers in one classification. This will result in females being forced to subsidize males and would, on average, increase auto insurance rates for younger women by 21 percent. We do not believe that the subsidization of the more accident prone younger males by safer younger females is in the public's interest.

We urge your rejection of the legislation.

The CHAIRMAN. Thank you.

[The statement follows:]

STATEMENT OF SALLY A. KIRKPATRICK, GOVERNMENT AFFAIRS REPRESENTATIVE,
ALLIANCE OF AMERICAN INSURERS

I am Sally Ann Kirkpatrick, Government Affairs Representative of the Alliance of American Insurers, a major national trade association of more than 150 companies which write automobile and other property and casualty insurance in every state of the Union and the District of Columbia.

We very much appreciate the opportunity to present our views on S. 2204, the "Fair Insurance Practices Act."

Mr. Chairman, most of our testimony today will address the issue of "sex discrimination." State laws, combined with state insurance codes, prohibit discrimination in the sale or pricing of insurance on the basis of race, color, religion, or national origin. Besides being illegal, such discrimination is abhorred by chief executive officers of Alliance member companies.

Were it not for the inclusion of "sex discrimination," S. 2204 would address no practices whatsoever which are a day-to-day part of the insurance business. The race, color, religion or national origin of a prospective policyholder does not enter in any way into a company's underwriting judgment or pricing system.

A person's sex is, however, the principal consideration if that person is a prospective automobile insurance policyholder, single and under 25 years of age. Everything else being equal, being a female makes that person a better risk entitled to lower insurance premiums.

CLASSIFICATION—THE BASIS FOR PRICING INSURANCE

Each year insurance companies put a price tag on literally millions of risk exposures. In order to minimize subjective judgment, classification systems have been developed whereby individuals sharing relatively similar risk exposures are grouped together for pricing purposes. The way a policyholder is classified has a direct bearing on the price he or she must pay for insurance.

The concept of using classification as a way of pricing a product or service is not restricted to insurance. Classifications are used to help determine the price of just about everything we buy, from steaks to airline seats. The cost of mailing a letter, getting a bank loan, or paying one's social security taxes all depend on the way we are classified.

Despite almost universal acceptance of the concept, however, the classification of insurance risks has been a most controversial subject. It is controversial because it seems to involve conflicts in social values which have not been resolved or perhaps fully recognized.

Most attacks on the classification system have been generated by those who believe they are paying too much for insurance. It is seldom those who are paying less than average that seek to have their classification status altered. In regard to property and casualty insurance, the effect of S. 2204 would be an increase in the cost of insurance for those who are perceived to be discriminated against!

As a general proposition, nearly everybody agrees that insurance companies should charge each policyholder a premium based on an objective evaluation of his or her risk exposure. This was recently corroborated in a public opinion survey performed by the All-Industry Research Advisory Council (AIRAC).¹ The proposition has become controversial because it leads to charging higher premiums for some policyholders. When this happens, there are demands for insurance pricing to be based on social rather than actuarial considerations.

There are literally thousands of characteristics which insurers may use for classification purposes. However, insurance pricing is based on the law of large numbers. For practical reasons, insurers must limit the criteria used for classification purposes to those that can readily be identified, those that are most objective in nature and those that are likely to have the greatest effect on risk exposure. For purposes of auto insurance, age, marital status, where the car is generally garaged, the use of the automobile, and sex have been identified as the most important criteria used in establishing the classifications.

The primary function of insurance in the property and casualty insurance business is the spreading of risk. Insurance itself does not create new capital. All policyholders pool relatively small sums of money (premiums) which are distributed to a few policyholders who have sustained accidents. The sum of funds pooled must be at least as large as the losses paid out by the insurance companies involved. If any one class of policyholder does not pay the fair share of anticipated losses, then all other policyholders must increase their payments to insure an adequate pool of funds to pay for all losses.

Artificial manipulation of the classification system leads directly to the subsidization of one class by another. As policymakers attempt to force insurance companies to cease using valid classification criteria in their rating plans, they are basically legislating against the use of empirical knowledge. They are forcing insurance companies purposely to misclassify certain insureds.

Such restrictions simply do not work. Insureds who are being overcharged for their insurance because they have been misclassified will be actively sought by competing insurance companies for their business. In turn, other insureds who also have been misclassified and who are not paying their fair share will be shunned. They will have to resort to residual market mechanisms to secure their insurance protection. In turn, this will set in motion forces that cannot produce a stable market condition until stringent government controls have been imposed on the marketing, underwriting, classification and rating functions of the industry. Such controls are certain to be counterproductive in the long run.

¹ AIRAC was formed by the property-casualty insurance industry to provide the public and the industry with timely, reliable research information relevant to public policy issues affecting risk and insurance.

Many of the problems the insurance industry has with restricted markets arise out of counterproductive efforts by legislatures and regulatory agencies to force insurers to act in ways contrary to economic realities. There is a direct correlation between insurance availability in the competitive marketplace and the freedom to classify and price insurance risks in accordance with expected losses.

INSURANCE CLASSIFICATION BASED ON SEX IS VALID AND EQUITABLE

The use of sex as a factor in auto insurance rating has been consistently justified by statistical analysis. Both insurance and noninsurance data confirm the fact that males consistently have more frequent and more severe automobile crashes than females.

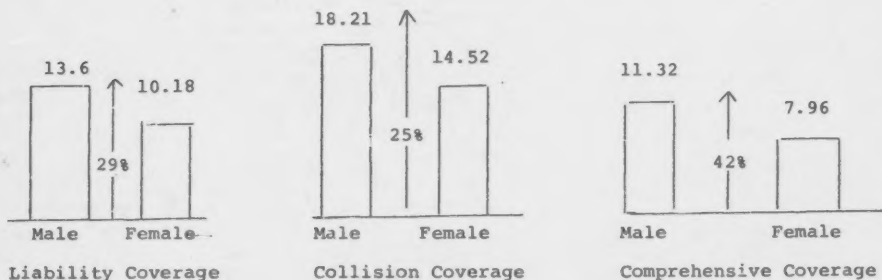
INSURANCE INDUSTRY DATA

We have prepared a number of tables from data published by the Insurance Services Office, a statistical advisory organization serving, among others, automobile insurers.

Table 1 presents the number of claims per 100 insured cars, comparing single male drivers as against single female drivers both under age 25.

Table 1

Number of Claims Per 100 Insured Cars
Single Male Drivers Under Age 25 Vs.
Single Female Drivers Under Age 25



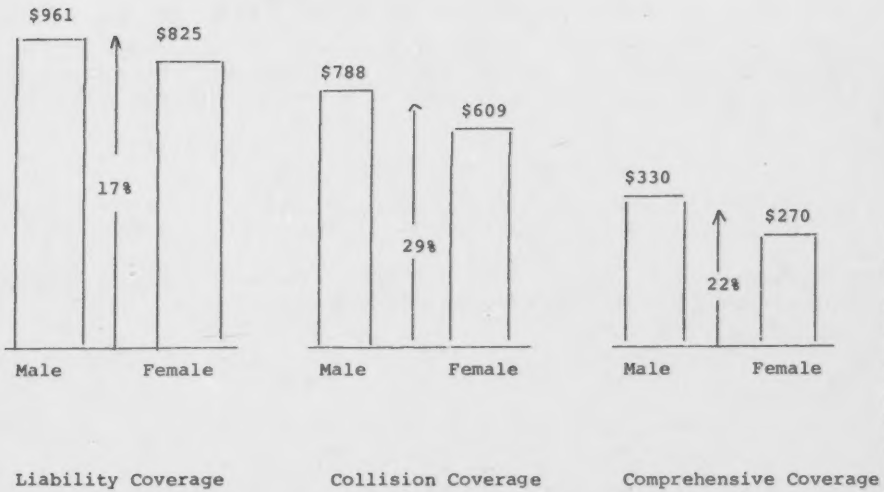
Note that for every coverage (liability, collision and comprehensive) female drivers consistently demonstrate a substantially reduced risk exposure. Male drivers are responsible for 29 percent more claims per 100 insured cars under liability coverages, 25 percent more claims under collision coverages and 42 percent more claims under comprehensive coverages.

Similar differences are evident when one measures the average loss per claim between single male and female drivers under age 25.

As noted in Table 2, average loss per claim is 17 percent more for males under liability coverage, 29 percent more for collision coverage and 22 percent more for comprehensive coverage.

Table 2

Average Loss Per Claim
Single Male Drivers Under Age 25 Vs.
Single Female Drivers Under Age 25



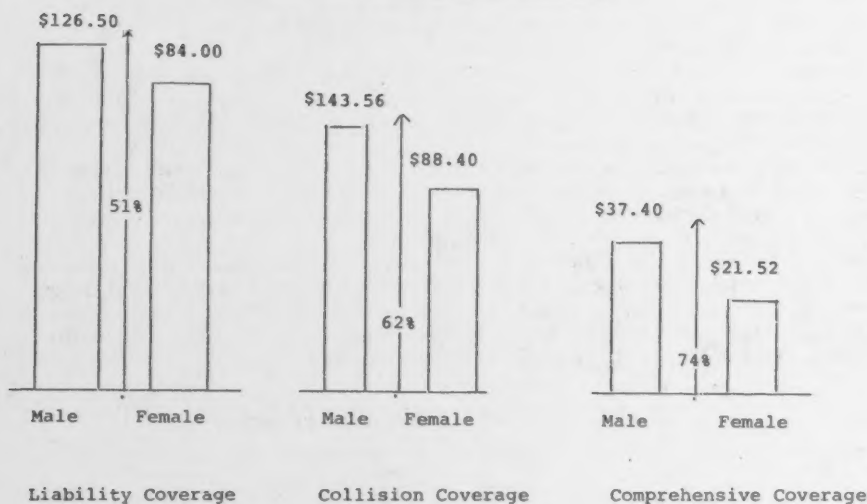
Again, if we compare the average loss per insured car owned by single males with that of single female drivers under age 25, the exact pattern repeats itself.

Table 3 will show that for liability coverage the average loss per car owned by a male was 51 percent more than a car owned by a female, 62 percent more under collision and 74 percent more under comprehensive coverage.

Table 3

Average Loss Per Insured Car

Single Male Drivers Under Age 25 vs.
Single Female Drivers Under Age 25



Data for the three years ended 12/31/78 and 6/30/79,
depending on state.

Source: Insurance Services Office

When the three coverages are combined, as they typically are in an auto insurance policy, young single males generate losses averaging 59 percent higher than young single females. The average losses per car for males is \$307.46 as compared to \$193.92 per car for females.

NON-INSURANCE INDUSTRY DATA

It could be claimed that insurance loss experience represents the risk to an insurance company providing coverage on an insured vehicle, not necessarily an insured person, and that this experience is a reflection of the mix of drivers using the vehicle, the environment in which the vehicle is operated, the amount and type of driving done, etc.

Studies based on non-insurance data confirm that males consistently have more frequent and more severe automobile crashes than females. Take State Motor Vehicle Administration data, for instance, which reflect accidents and violations reported to the states by police and/or the courts. We recognize these reports are incomplete for a variety of reasons and that State Motor Vehicle Administration compilations from the reports are not directly comparable with insurance loss experience. Nevertheless, the state compilations are important and necessary in confirming that there is a significant difference in accident involvement between males and females.

Accident rates

A variety of studies show males have a disproportionate share of automobile accidents.

A 1979 study² of California driving performance by the California Department of Insurance shows that male drivers have 1.43 times as many reported accidents as females. Males of all ages have 4.76 accidents per 100 drivers per year compared with 3.34 accidents per 100 drivers per year for females.

Differences in accident frequency between males and females is been greater for young drivers. Males under age 25 had 1.57 times as many accidents per 100 drivers as young females. Young male drivers had 6.2 accidents per 100 drivers per year compared with 3.96 for young female drivers.

Motor vehicle statistics for New York show that young male drivers have twice as many reported accidents as young females. In 1978, males under age 25 were involved in 12.1 accidents per 100 licensed drivers compared with 6.0 accidents per 100 licensed drivers for young females.

South Carolina accident statistics show that young male drivers were involved in nearly twice (1.85) as many accidents as young female drivers. In 1979, males under age 25 were involved in 9.8 accidents per 100 licensed drivers compared with 5.3 accidents per 100 licensed drivers for young females.

It has been suggested that differences in accident involvement are due to the fact that females drive less. However, Table 4 shows that within every annual mileage category, women had a better accident record than men. This table was prepared by the U.S. Department of Transportation, Federal Highway Administration, with the assistance of the California Department of Public Works.

Table 4.—ACCIDENT RECORDS BY GENDER AND ANNUAL MILEAGE

Accident mileage	Number of males	Average number of accidents (3 year accident record)	Number of females	Average number of accidents (3 year accident record)	Ratio of male to female accidents
Up to 2,499.....	221	0.163	619	0.079	2.06
2,500 to 4,999.....	370	.268	1,046	.103	2.60
5,000 to 7,499.....	877	.223	1,733	.152	1.47
7,500 to 9,999.....	598	.229	588	.179	1.28
10,000 to 14,999.....	2,713	.271	932	.242	1.12
15,000 to 19,999.....	1,436	.319	241	.249	1.28
20,000 to 24,999.....	1,023	.345	127	.299	1.15
25,000 to 29,999.....	482	.353	45	.277	1.27
30,000 to 39,999.....	618	.350	33	.271	1.29
40,000 to 49,000.....	244	.430	8	.273	1.58
50,000 or more.....	422	.563	13	.318	1.77
Total.....	9,024	.305	5,355	.163	1.87

Source: U.S. Department of Transportation, Federal Highway Administration (with California Department of Public Works), "The Effects of Exposure to Risk on Driving Record," June 1973.

Accident Facts, a publication of the National Safety Council, also shows that when put on a basis of accidents per miles driven, the male driver accident frequency is higher than that for female drivers. In 1980, male drivers were involved in 1.04 times as many accidents per ten million miles driven as females.

In a 16 year period, 1965 to 1980, the accident rate per ten million miles driven for males was on the average of 1.20 times greater than that for females.

When the fact that male drivers are involved in more serious accidents (See "Severity and Crashes" which follows) is considered, it becomes clear that the distinction based on gender in auto insurance classification plans cannot be eliminated without affecting the basic economics of the insurance marketplace.

Violations

Studies show that males receive a much greater number of citations as well as different types of citations than females.

The California Insurance Department study³ shows that the following conviction results for a five-year period preceding July 1, 1978:

² The Study of California Driving Performance (Phase 2), Rate Regulation Division, California Department of Insurance, November 1979.

³ Ibid.

Male drivers had 11.5 major convictions per 100 drivers compared with 1.8 for females.

Male drivers were convicted of 103.6 moving traffic violations per 100 drivers compared with 46.4 for females.

Male drivers had 21.7 nonmoving violations per 100 drivers compared with 4.3 for females.

Male drivers had 3.2 suspensions/revocations per 100 drivers compared with 0.7 for females.

A report ⁴ by the Michigan Department of State shows that in 1978, men had nearly three times as many speeding violations as women. The speeding conviction rate per 100 drivers was 6.4 for males compared with 2.3 for females. Differences persist even when data are adjusted for mileage driven.

Weber ⁵, in her review of literature dealing with differences between male and female drivers, points out that Harrington and McBride (1970) ⁶ found men had 19 percent violations per miles driven than women. Men were guilty of more serious violations as evidenced by higher rates for major violations (reckless driving, manslaughter, driving under the influence of alcohol, etc.), as well as for speed and faulty speed equipment.

Men had 1.75 times as many major violations per billion miles driven—seven violations per billion miles for males compared with four for females. Women had higher violation rates for failure to obey traffic signs and signals, and failure to yield right-of-way. Table 5 compares the violations per billion miles for males and females.

TABLE 5.—VIOLATIONS PER BILLION MILES FOR MALES AND FEMALES

Violations per billion miles	Type of violation	
	Males	Females
Speed	70	57
Equipment	37	12
Passing/following	20	11
Major violations	7	4
Sign/Signal	51	58
Turning	21	20
Right-of-way	11	15

Source: Harrington & McBride, 1970.

Severity and crashes

Men tend to be involved in more serious auto accidents. *Accident Facts* shows that in 1980 male drivers were involved in more than twice as many fatal accidents as females. Men were involved in 56 fatal accidents per billion miles driven, compared with 24 for females. Over the 16 year period, 1965 to 1980, the fatal accident rate for male drivers was on the average 2.2 times the fatal accident rate for females.

A study of automobile claims by the All-Industry Research Advisory Council (AIRAC) ⁷ shows that male driver injuries were more severe as measured by average medical expenses. For example, the average medical expense for male drivers receiving bodily injury liability coverage payments was \$854 compared with \$684 for female drivers, a difference of nearly 25 percent. In addition, the AIRAC study shows that a disproportionate share of male drivers were represented in the category of personal injury claims in excess of \$100,000. About three-fourths of the drivers in the sample of serious claims were male. In contrast, male drivers represent about 54 percent of all licensed drivers in all three states included in the special study of serious claims.

The California Insurance Department study ⁸ of driving performance shows that male drivers under age 25 were involved in 1.6 times as many injury-producing acci-

⁴ Michigan Department of State, "Michigan Driver Statistics, Report No. 13," July 1, 1980.

⁵ Weber, K. "Are Men or Women Better Drivers," HIT Lab Reports, January 1977, vol. 5, No. 5, 1-11.

⁶ Harrington, D. M. and McBride, R. S., "Traffic Violations by Type, Age, Sex and Marital Status," Accident Analysis and Prevention, vol. 2, No. 1, May 1970.

⁷ All-Industry Research Advisory Council, "Automobile Injuries and their Compensation for the United States," March 1972.

⁸ California Department of Insurance, op. cit., p. 8.

dents as young females. Young male drivers have 2.6 injury-producing accidents per 100 drivers per year, compared with 1.6 for females.

Driving Pattern

Many studies point out the following differences in driving patterns between male and female drivers:

Men tend to obtain a drivers license at an earlier age than females.

Male drivers drive substantially more miles per year than females.

Men do more nighttime driving.

Males do most of the weekend driving.

Male drivers are more likely to be impaired by alcohol.

The characteristics above are generally associated with higher accident involvement and severity. For example, *Accident Facts* shows that motor vehicle deaths run above average from Friday through Sunday. Motor vehicle deaths at night total only a few thousand more than during the day but deaths in relation to travel are sharply higher at night. *Accident Facts* notes that the death rate per 100 million vehicle miles is 7.35 at night compared with 1.98 during the day. In urban areas, the mileage death rate at night is over three times the daytime death rate (4.83 versus 1.31). In rural areas, the night death rate is also more than three times the day rate (10.59 versus 2.83).

Accident Facts also notes that drinking is indicated as a factor in at least half of the fatal motor vehicle accidents. Michigan driver statistics show that, for every female involved in an alcohol-related accident, there were 6.2 males. In addition, the ratio of males to females for convictions for driving under the influence of alcohol or driving while intoxicated was 10.9 to 1, while the ratio of males to females in the driving population study was only 1.1 to 1.

THE EFFECTS OF S. 2204

The effects of S. 2204 would be two-fold.

First, it would require insurance companies to apply "reverse discrimination" in its pricing mechanism.

Second, it would force young female drivers to pay considerably more for their auto insurance than should reasonably be expected by their risk exposure.

Reverse discrimination

Every state insurance rating law prohibits insurers from practicing unfair discrimination in the pricing of their products. Insurers are under obligation to classify policyholders in such a way that relatively similar exposures are priced alike.

S. 2204 would prohibit the fair classification of younger females. Clearly younger women drivers present less risk exposure for insurance companies. There is nothing anatomical in the statistics and studies cited in this testimony. The reasons for the differences between male and female drivers are immaterial. The differences are there, and younger females should benefit from the economic advantages to be derived from these differences.

Failure to recognize these differences can only be labeled "Unfair Discrimination."

S. 2204 Will Increase Insurance Costs for Younger Female Drivers

S. 2204 will force insurance companies to lump younger drivers in one classification. This will result in females being forced to subsidize males. It has been projected that S. 2204 would, on average, increase auto insurance rates for younger women by 21 percent. It would also decrease rates for younger males by 7 percent. We do not believe that the subsidization of more accidentprone younger males by safer younger females is in the public interest.

S. 2204 Will Disrupt Insurance Markets and Interfere With the Normal Operation of Competition

As previously mentioned, if insurers are prohibited from applying rate classification criteria to younger females, these females will become more attractive than they should be to insurance companies since they will be paying higher premiums than the risk exposures they present. On the other hand, companies will attempt to avoid their male counterparts since, as a group, they will not be carrying their load in premium payments. Consequently, more younger males will be forced into automobile residual market mechanisms where they are likely to pay higher premiums than what might otherwise be available in the competitive market.

CONCLUSION

Mr. Chairman, the use of sex as a classification factor in determining automobile insurance premiums has been reviewed time and time again by state insurance commissioners, the National Association of Insurance Commissioners and state legislators. Today, after extensive investigations and study, only five states have banned sex as a factor in pricing automobile insurance: Hawaii, Massachusetts, Michigan, North Carolina and Pennsylvania. However, the Pennsylvania ruling is currently under appeal.

Three of these four states have experienced unusual automobile insurance market dislocations. Although not all such dislocations can be attributed to the elimination of sex as a classification criterion, such elimination has played a part in the dislocation.

Our prediction is that enactment of S. 2204 will unsettle automobile insurance markets on a countrywide basis. No one will benefit, least of all those who are expected to be helped by the bill.

We urge your rejection of this legislation.

The CHAIRMAN. Mr. Hunter.

Mr. HUNTER. Good morning.

The CHAIRMAN. Good morning.

Mr. HUNTER. Discrimination in insurance takes two forms: Underwriting and classification. In property and casualty insurance, underwriting can take the form of redlining along racial lines in the cities; young males have severe problems getting auto insurance; those who speak poor English have severe problems of getting auto insurance because they might be a bad witness in a limits case in court. Therefore, they are shunned by insurers, to name a few. These are discriminatory practices. Insurers say, however, this doesn't happen and your legislation would do nothing as respects underwriting. I would therefore say that you should move to outlaw such activity at once since it would not hurt them in any way.

Classification is the second area. It is the rating of risks by groups. This is the area where insurers and consumers will part company on the merits. In property and casualty insurance no company classifies by race, color, religion or national origin. Gender classes exist only in auto insurance, and then only for some, mostly those under 25 years of age. Never for instance for married females. They are never used as a classifier. They become classified by their husband's class. Where gender is used, the underlying statistics—

The CHAIRMAN. Say that again.

Mr. HUNTER. Married women are never considered as a class; they never establish the classification.

The CHAIRMAN. The unmarried women or women under 25, but a married woman at any age is classified by her husband's class at any age?

Mr. HUNTER. By her husband's class. That is correct.

The CHAIRMAN. Is that right, Ms. Kirkpatrick?

Ms. KIRKPATRICK. Yes, but the reason for that is whenever you have a family, whether you have two drivers or three drivers or five drivers, however many, the insurance is always priced according to the poorest risk in the house. In this situation, if you have a young couple both 24 years of age, the policy will be priced according to the male driver.

Mr. HUNTER. Regardless of who is the drunk.

Ms. KIRKPATRICK. Well, statistically males are more likely to be the drunk.

The CHAIRMAN. Go ahead. I did not mean to interrupt.

Mr. HUNTER. Thank you. I think we made our point.

Where gender is used, the underlying statistics are suspect. Accidents caused by a 45-year old mother of a youthful male are charged to the youthful male classification, for instance. There is no way to unscramble this statistically scrambled egg. Five States have outlawed the use of gender classification. In Michigan the legislature acted after the Michigan Supreme Court ruled that rates that can be established on an unsubstantial bases that do not satisfy due process should not be allowed.

The issue of discrimination is particularly acute in auto insurance where the States require insurance to be purchased. Thus premiums are really a tax on road use, a very regressive tax when territorial rates are analyzed against incomes. Where the industry's own studies on sex show that 28 percent of young male drivers have expected losses below the average young female driver, and 13 percent of young females have accident likelihoods greater than the average young male, we are told statistically what we already know that classifying automobile risks by sex unfairly discriminates against many young men. Gender classification in auto insurance is a surrogate for mileage and driving records. That is why GAO said in 1979:

Despite serious questions about accuracy and fairness of the class plans, most State insurance departments have unquestionably accepted pricing systems that are convenient for insurance companies rather than effectively protecting the legal rights of their citizens . . . Few States have undertaken evaluations of whether the classification plan satisfies State prohibitions against unfair discrimination. Since State insurance departments have not examined the current classification plans with sufficient rigor to assure they are not unfairly discriminatory, continued Federal consideration of risk classification is necessary . . . Uniform remedies to differences in the current classification system will probably have to come about through Federal legislation.

GAO pointed out that there was a major FTC study on this issue under way. Unfortunately and ironically, when Congress forbade the FTC to study insurance and thus 12 percent of the Nation's disposable income, it axed this study in the process, and the knowledge we could have used today became unavailable. Perhaps that study could be resurrected. Maybe you don't need it.

The ultimate responsibility for regulating this huge business is Congress, given the Supreme Court ruling that insurance is interstate commerce. Commerce chose to regulate by exempting insurance from the antitrust laws and thus the cartels and all that continue in force today. Congress chose to rely on regulation by the States in lieu of competition, and Congress can fix the problem if the States do not.

The States have not fixed this problem, and you must. The issue before you is not, I repeat, not actuarial. I am an actuary so I can speak with some authority on that. In fact the actuarial basis for classification is not really firm. As I said, it is a surrogate for mileage, in all probability. The issue for property casualty insurance sex classification is social acceptability and the protection of individual rights. Has gender become socially unacceptable classifier as race became decades ago?

Should individuals be held guilty by association with their gender group? Remember, 28 percent of the good young males are trapped by their maleness. Their goodness cannot get them out of the class. Insurers call this "cost-based" pricing, but I call it "caste-based" pricing. If accidents and tickets were given priority in setting auto rates, then the truly bad would have their badness catch up.

Insurers thrive under unisex auto rules in five States today. Good driving consumers, if mileage and good driving discounts were adopted, would not have to pay any more, all this \$700 million—or \$60 per car—to the contrary notwithstanding. If mileage were reflected, women who drove a fewer number of miles would not have to pay any more.

Therefore, I believe that Congress should exercise its authority, as GAO told you you might have to do and protect individual rights. The States have not moved since the 1979 GAO findings. Race, color, national origin, sex, and religion have no place in either underwriting or classification in 1982.

[The statement follows:]

STATEMENT OF J. ROBERT HUNTER, PRESIDENT, NATIONAL INSURANCE CONSUMER ORGANIZATION

INTRODUCTION

Mr. Chairman, and Members of the Committee, it is an honor to be invited here today to talk with you about the important issue of unfair discrimination in insurance.

I appear today on behalf of the National Insurance Consumer Organization, a non-profit organization dedicated to a better-informed insurance buying public and to the creation of fairer and more efficient insurance delivery systems through elimination of such serious anti-competitive behavior as state laws which allow cartelized ratesetting, which impede group purchase of insurance, and which outlaw any competition among the agents of an insurer (reminiscent of the old "Fair-Trade law" days). These anti-competitive practices waste tens of billions of dollars in the current economy.

Thus, Andrew Tobias in his new bestselling book on insurance, "The Invisible Bankers," can say:

"Roots of the industry's inefficiency are manifold. The fire insurance business is dominated by giant mutual insurers whose managements have no one to answer to but themselves. They are motivated toward growing larger, not leaner. One might expect the marketplace to impose its own economic discipline—it is competition based on price that has always been the surest spur to efficiency—but insurance prices, particularly life insurance prices, are notoriously hard to evaluate, leaving consumers unable to spot the best values and insurers under little pressure to provide them. Federal regulation and antitrust statutes largely exempt the insurance industry; state regulators are anxious to keep even inefficient companies profitable, lest policyholders be left stranded or claims go unpaid. Then, too, there are the problems of policyholders gleefully defrauding their insurers and of insurers callously chiseling their insureds—an inherently inefficient and seemingly irremediable circle of distrust.

"There are ways to improve the system radically. But this is not an industry, by and large, that seeks radical improvement. Inbred and living in comfortable insulation with its state regulators, it has been slow to innovate. A 'cash cow' of the first order", it has resisted change.¹

And, significantly, the industry itself agrees with Mr. Tobias. In a speech given May 27, 1982 to the Insurance Brokers Association of New York State, John Cox, Executive Vice President of CIGNA (formerly President of INA) said:

¹ Tobias, Andrew. *The Invisible Bankers*, New York, Linden Press, 1982, p. 24-25.

"He (Tobias) said that the business is inefficient. And he's right. We spend too much money in distribution, administration, and in what is considered to be pure waste."²

LEGISLATIVE RESPONSIBILITY

The first point that I must make to you, in the strongest possible terms, is that the ultimate responsibility for the serious problems this country faces in insurance, including unfair discrimination, fall on your shoulders. Insurance has been subject to federal regulation since the Supreme Court ruled in 1944 that insurance was inter-state commerce. Congress elected, in 1945, largely exempt the business of insurance from the application of antitrust laws, in exchange for some degree of regulation (with no federal standards) at the State level.

If states fail to act to remedy the wrong, to protect its citizens, then you must.

DISCRIMINATION IN INSURANCE

Discrimination in insurance can take two forms:

- (1) underwriting discrimination; and
- (2) rate (or classification) discrimination.

UNDERWRITING

Underwriting means the process by which insurance companies reject or accept risks. Whereas underwriting can be quite sophisticated for a large commercial risk—involving extensive inspection and engineering services leading to suggestions for reducing or avoiding risk prior to writing a risk—it is usually rudimentary for personal lines such as homeowners or auto insurance. It is, in these lines, a "yes" or "no", often based on where you live, your ability to make a good impression in court, or other subjective rationale.

In insurance, unlike most other products and services, when a company advertises its auto policy for a young male at \$500 and the young male says "I'll take it", the "I'll take it" is the offer. It remains for the insurer to decide whether to accept the offer or not.

Underwriting can be, as in the case of many larger commercial risks, very logical and risk related. In the case of the person seeking auto insurance, it may be purely whim or may be based on redlining practice and, indeed, may be based upon his or her gender.³ Unfortunately, someone whose English is poor often is considered a "bad" risk for auto insurance—no matter how brilliant his or her driving ability may be, because of the fear of a court appearance in a large case. Thus, national origin and race do enter the picture.⁴

In other casualty lines, such as homeowners insurance, it may be that, in some places, women who are heads of households have difficulty in obtaining needed coverage, if complaints we receive are indicative.

Underwriting based upon race, color, gender, religion or national origin presents very serious problems. However, it is my belief that the industry itself opposes these practices and, I anticipate, that there will be no substantive reason presented for you not to outlaw this sort of underwriting. The argument, I expect, will take a

² As reported in Insurance advocate, June 12, 1982, p. 16.

³ New York State Insurance Department, "The Automobile Assigned Risk Plan in New York" (1972), p. 21, states, "... during the first quarter of 1981, nearly 30 percent of young male drivers in the state were insured through the (Assigned Risk) Plan, which means that such a driver is about three times more likely than his older counterpart to be insured in the plan."

⁴ Department of Transportation, "A Study of Assigned Risk Plans," (1970), pp. 150-151, states, "A study by the New York Commission on Human Rights was conducted on 3,688 new applications to the New York Plan in 1968. Of these applications, 1,098 or 29.8 percent were from whites and 2,590 or 70.2 percent were from Puerto Ricans and Negroes. The Bureau of Census indicates that in the State of New York, 90.95 percent of the population is white and only 9.05 percent is nonwhite."

Federal Insurance Administration, "Insurance Crisis in Urban America," (1978) states, "Insurance Redlining has an undeniable racial component." (p. 43) and, "There is a strong correlation between FAIR Plan writing and the racial composition of a neighborhood. In neighborhoods where the nonwhite population is no more than 2 percent, the percentage of FAIR Plan policies is most likely to be less than 1 percent. In neighborhoods where 50 percent or more of the population is nonwhite, the heaviest concentration of FAIR Plan policyholders occur . . . Correlation tests show that FAIR Plan policies are slightly more likely to be written in a Black or Puerto Rican neighborhood than in a neighborhood than in a neighborhood that contains building code violations." (p. 36.)

more "states-rights" form, which, while political gospel these days, is, at least under current Supreme Court ruling, legal nonsense.

CLASSIFICATION

The more disputed issue before you as respects property/casualty insurance, one where you will get significant difference of opinion on the merits, is whether or not rates (as opposed to underwriting decisions) should be differentiated by any of these criteria.

This is actually a rather narrow issue for property/casualty insurance. To my knowledge, no one proposes to classify in any insurance line by race, color, religion or national origin. In property/casualty insurance today, only gender classification of those you would prohibit is used. Gender classes exist only in Auto insurance, and even there only for some males and some females. Interestingly, married females are never even considered in classification plans, perhaps an indication of stereotyping. Young unmarried females who go to school more than 100 or 150 miles from home never are used. Males or females in major age category blocks are often not used.

Even where gender is used (mostly for the young), it is used in a statistically mixed-up way. Accidents caused by parents of a youth are charged to the youth. Apparently, youthful operator classes have more drivers per car (usually adults) than do non-youthful classes. There is no way to unscramble this statistical egg, which is a major reason why the state of Pennsylvania recently moved to eliminate this class, following Hawaii, Massachusetts, Michigan and North Carolina in doing so.

The Michigan situation is of particular interest. In that state, as in many others, auto insurance is required to be purchased by the state. In 1978, the Michigan Supreme Court ruled, in the *Shavers*⁵ case, that the law did not assure "fair and equitable" rates for the compulsory coverages. It ordered that the legislature remedy that situation within 18 months, suggesting that the legislature give "substantial meaning" to the term "unfair discrimination". It held that the insurers became arms of the state in carrying out the mandatory insurance scheme and that uprating individuals based upon group statistics may violate due process protections of the Constitution, unless the insurer could show that the individual was properly being so rated. The legislature responded with the Essential Insurance Act, which prohibits the use of gender and marital status for rating. The Insurance Department has just issued a report on its first year of operation and has found no difficulties in operating with this prohibition in force.

Excellent studies of this issue have also been made by the States of Massachusetts and New Jersey. These are available for your staff review, I understand.

THE GENERAL ACCOUNTING OFFICE (GAO) REPORT

The only indepth review of this issue made by the ultimately responsible government—the Federal government—was made public in October, 1979 (Report of the Comptroller General, entitled "Issues and Needed Improvements in State Regulation of the Insurance Business").

Not unlike the Michigan Supreme Court's finding, GAO said that, "despite the serious questions that have been made about the accuracy and fairness of the classification plans, most State Insurance Departments have unquestioningly accepted pricing systems that are convenient for insurance companies rather than effectively protecting the legal rights of their citizens."

GAO's extensive report, while not drawing conclusions about constitutionality of class plans, noted that the "statutes governing classification plans in all states we visited are similar to the provisions of Michigan law that were found constitutionally deficient by the Michigan Supreme Court . . . few States have undertaken their own evaluations of whether the current classification plans satisfy State prohibitions against unfair discrimination." The GAO report continues:

"Because there are substantial economies of scale in studying the question of classification, there is an appropriate Federal role in studying or sponsoring studies of the risk classification system. Indeed, since State insurance departments have not yet examined the current classification plans with sufficient rigor to assure that they are not unfairly discriminatory, continued Federal consideration of risk classification is necessary. Inasmuch as the National Association of Insurance Commissioners has declined to follow through on its task force findings (that sex and marital status be eliminated as rating criteria) and recommendations, uniform remedies

⁵ *Shavers vs. Kelley*, 267 N.W. 2d 72 (1978).

to deficiencies in the current classification system will probably have to come about through Federal legislation." ⁶

GAO also reminds us of another era here, in Washington:

"The Federal Trade Commission has contracted for a major study of the economics of insurance discrimination that aims, in part, to examine the success and consequences of the present classification schemes in assessing risk levels. The study will develop a model which can be used to determine the results when such variables as sex or age are excluded from rate classification methods. The FTC study promises to be the most extensive theoretical study on the subject since the SRI International study in 1977. We, therefore, believe it best to reserve comment on the adequacy of classification schemes pending the outcome of that FTC sponsored study."

Unfortunately, the FTC was untimely torn (in 1980) from its right even to study insurance (and thus 12 percent of the nation's disposable income) by Congress. Thus, this critical study—fairly well along at the time the axe fell, I believe—was not completed. Ironically, Congress may have denied itself important knowledge which could have been used today to more completely come to grips with the subject of this hearing.

Perhaps the study could be completed by GAO or FTC (if you authorized it) or some other Federal agency. Or, perhaps, completed parts of the study (if any) could now be released.

HOW CAN CONGRESS DECIDE THIS RATHER LIMITED ISSUE

The fundamental issue in property/casualty insurance is use of gender as an auto insurance classifier. Some of the keys to the gender classification issue are actuarial, viz: Is the class homogeneous? Is the class reliable? Is the class sufficiently separate (in expected losses) from other classes?

Other keys to classification appropriateness are not actuarial: What class shall we erect? (Underwriters do this.) Is it legal? (Lawyers, courts.) Is it socially acceptable? (Legislators.) Does it protect the individual from unfair discrimination? (Courts, legislators.) Does it contain incentives for loss reduction? Etc. . . .

I think most actuaries would agree that the use of gender classes in auto insurance produces somewhat homogeneous and reliable results. The SRI Report makes it clear that there is considerable overlap (i.e., 28 percent of young males have expected losses—and thus cost based prices—below the average young female and 13 percent of females have high accident likelihood than the average male) ⁷ so that separation is suspect.

I submit, however, that the issue before you is not actuarial. The issue before you for property/casualty insurance is social acceptability and protection of individual rights. Surely you don't need an SRI study to tell you what you already know—what you know without doubt—that there are some young males with better loss expectations than some young females. Some individuals thus must be treated unfairly under today's approach.

This is fundamental, as is the changing social acceptance of sex as a classifier, much as use of race as a classifier in life insurance became socially unacceptable a few decades ago (although still "actuarially" sound). Individuals deserve better treatment than guilt by association with some group they happen to fall into. The truly "good" driver, if male, cannot break out of the trap of his maleness. His "goodness" cannot catch up with him. There is no incentive for improved driving in this scheme.

If greater reliance were placed upon driving record, then "badness" would catch up with those who were "bad" as evidenced by bad driving record.

Don't forget, ultimately, no one without accidents is "bad" in an insurance sense. Only those with accidents drive up rates by drawing down from the common fund we all contribute our dollars to create.

IMPACT UPON INSURERS

Surely, insurers will thrive if S. 2240 passes. After all, we are not talking about the size of the pie insurers will have, but how to slice it.

⁶ Indeed, in response to the GAO report, NAIC called for a joint Industry-NAIC study of alternative classification variables. The study never got started since the approach could not, apparently, be agreed to. NAIC staff is undertaking a study at this time.

⁷ Stanford Research Institute, Supplement to the Role of Risk Classification in Property and Casualty Insurance, May, 1976, p. 204.

Insurers already continue to do well, and adjust easily to prohibitions on use of sex as a classifier in auto insurance. Michigan is the latest proof that, following successes in several states.

Insurers continue to move voluntarily to "unisex" auto rating approaches. Commercial Union and Motorists Insurance are examples of companies that have moved, at least experimentally to these approaches. The attachment to this statement is part of an internal memorandum of a major insurer which shows that gender can be eliminated with no overall impact if mileage and a 5-year claim free discount were used as an alternative. This insurer's study⁸ shows that minor negative impact would be felt in "class plan efficiency," "underwriting expense" and "market availability" whereas minor positive impact would occur in "producer relations" and "competitive positions". A significant positive impact would occur in "consumer opinion", this insurer feels.

Thus, while the "actuarial" issues of eliminating sex as a classifier remain negative, in this company's opinion at least, they are counterbalanced by other considerations. And they don't have to concern themselves with individual rights in their analysis.

Even though the impact on insurers is really small, you can anticipate a clarion call from them for what they will term "cost based pricing"—which simply means pricing based upon group averages. I suggest that you call it what it really is: "caste based pricing", and that you insist that this huge private bureaucracy bend a little, at no cost to themselves, to find ways to treat individual Americans more fairly.

IMPACT UPON CONSUMERS

If nothing else changed, rates for young women drivers might rise by 25 percent and for young men decrease by a similar amount. The expense of doing business would drop in the long run since less information would need to be collected.

If other things do change, for instance if mileage were added as a classifier, and 5-year discounts, those young women who drive less (in 1973, on average, women drove 7,211 miles compared to 17,671 miles for young men)⁹ would not have to pay more than they do today.

And, if we coupled with these changes Congressional action to improve competition within this industry, everyone could pay less than they do today in their aggregate property/casualty insurance bills, if not in auto insurance alone.

AN ACTUARY'S OPINION

Actuaries are very good at what they do. I am proud to have chosen this profession as my career.

Actuaries, however, don't claim to (nor do we) have all the answers. Many of the questions go far beyond the actuarial arts, so please do not be confused by all the actuarial talk you will encounter at these hearings. The ultimate responsibility of declaring a class "off-limits" is the public's and, thus, as our elected representatives, falls upon you if the States fail to act, as GAO told you in 1979 they were failing to do. They continue to fail under intense insurer lobbying.

It is my opinion that you should, for property/casualty insurance, enact S. 2204 straight away. You should, in my estimation, add to it prohibitions against use of territorial underwriting (i.e., "redlining"), occupation underwriting and income underwriting, since these are surrogates for race. While refusal to write in the cities and in rural areas, refusal to write dishwashers, busboys, etc. will discriminate against some poor whites, that in itself may insulate insurers from successful proceedings under the bill. Refusal to write, refusal to renew, or cancellation of a policy based in whole or in part on any of these reasons must also be specifically prohibited. Race, color, national origin, sex and religion simply have no place in underwriting or as classifiers in America in 1982.

I would be happy to respond to any questions you may have.

⁸ A copy of the full study, which identifies the company, has been given to the Committee staff for its use.

⁹ U.S. Department of Transportation, Federal Highway Administration, The Effects of Exposure to Risk on Driving Record, June 1973.

Alternative rating factors/comments	Expected impact on—						
	Class plan efficiency	Under-writing expenses	Producers relations	Consumer opinion	Market availability	Competitive position	Overall impact
(a) Annual mileage (difficult to validate)	(¹)	(¹)	(¹)	(²)	(¹)	(¹)	(¹)
(b) Minor violations (would impact all age groups)	(³)	(⁴)	(⁴)	(³)	(¹)	(¹)	(³)
(c) Minor violations (limited) would impact only inexperienced operators (less than 5 years)	(³)	(³)	(³)	(¹)	(¹)	(¹)	(¹)
(d) 5-year claim free discount (discount would apply only to experienced operators)	(³)	(¹)	(³)	(²)	(¹)	(¹)	(¹)
(a) + (d)	(¹)	(¹)	(³)	(²)	(¹)	(³)	(⁶)
(a) + (c) + (d)	(¹)	(³)	(¹)	(³)	(¹)	(²)	(¹)

¹ Minor negative impact.

² Significant positive impact.

³ Significant negative impact.

⁴ Major negative impact.

⁵ Minor positive impact.

⁶ No impact.

The CHAIRMAN. Thank you.

Mr. Squires.

Mr. SQUIRES. Good morning, Mr. Chairman. My name is Sanford Squires. I am here on behalf of Commercial Union Insurance Companies of Boston, Mass. Commercial Union is a stock agency company with corporate headquarters located in Boston. We are licensed to write in all forms of insurance throughout the United States.

I am here this morning to make a few remarks about our custom automobile program. It is a unique automobile classification plan developed exclusively by Commercial Union. It is one of our many innovative programs to support the American agency system by providing sound, competitive, and efficient insurance systems.

The most notable distinction between the custom auto program and the more traditional classification plans used by most other companies is that age, sex, and marital status are not used as rating variables in the program. We added several new variables to the custom auto plan and made major improvements compared to the way these variables are used in existing plans. In short, custom auto is more than a program which just does not use age, sex, and marital status. Even though we do not explicitly use sex, we do see average premiums higher for males than for females.

There are other variables which are correlated with sex and will produce differences in premiums by sex even when sex is not explicitly used to rate a policy. Among these variables are annual mileage, make and model of a car, the age of the car, policy coverage chosen by the insured, and many more.

We would like to emphasize that these results have been achieved only after careful thought and analysis in developing our plan. We were motivated by a spirit of competition. Because S. 2204 is legislation which will impose restrictions on insurance companies, we are opposed to it. We believe the best answers to the current economic, social, and political problems in insurance are achieved through greater freedom to companies to innovate and compete.

The development of the custom auto program was the result of the original analysis in 1977 by Commercial Union staff. The goal was to reassess the classification variables in order to develop a

new class plan to allow CU to compete effectively and maintain consumer equity.

In our research we tried to objectively evaluate an extensive list of possible rating variables against a list of six criteria which we felt were important for classification variables to meet. These six criteria were:

Causality. A cause and effect relationship should exist between a risk factor and the potential for loss.

Homogeneity. The application of a factor should result in groupings that are homogeneous.

Incentive value. The risk factor should provide incentives for loss reduction that are within the control of the insured.

Social acceptability. A risk factor should generally be acceptable to the insuring public.

Practicality. A risk factor should be readily measurable and usable.

Verifiability. A risk factor must be able to be verified.

Having selected these six criteria, we evaluated several dozen potential rating factors. We found that 11 factors were suitable for the custom auto program. They are as follows:

Driving experience. This factor measures the number of years a person has been licensed to drive. The inexperienced operator under our program will receive a higher rate than the experienced operator. This factor replaces age of operator as a rating variable which is currently used by most companies.

Vehicle use. This factor measures the conditions under which the vehicle is operated. Commuting and business risks pay a higher premium than the average pleasure risk.

Annual mileage. This factor measures the vehicle's relative exposure to loss. Those vehicles which have a greater annual mileage will receive a higher rate under our program than those vehicles with lesser annual mileage.

The vehicle's principal owner or operator. This factor we have retained from the traditional classification approach. Premiums will vary depending on the inexperienced operator's degree of use of the vehicle.

Driving record. Those drivers with a history of accidents and convictions will receive a higher rate than the driver with an exemplary driving record.

Claims history. Those policyholders with a superior claims record with our companies will receive a discount in recognition of their experience.

Vehicle safety devices. Those vehicles equipped with antitheft and passive restraint devices will receive credits to their premium.

Driver training. Those inexperienced operators who have the benefit of driver training will receive a lower rate under our program.

Territory, including the territory of principal use. Rates will vary depending upon the territory of garaging. This is the traditional approach. By recognizing the vehicle's territory of principal use, those vehicles which regularly commute into rating territories other than their garaging territory will receive a rate which reflects the relative exposure of both the garaging territory and the commuting territory. This is new.

Vehicle make and model. Our program expands upon the traditional method of rating vehicles based solely on cost new. Our program recognizes that some vehicles are more crashworthy and cost less to repair than the average car. These cars are recognized in our program and receive a higher or lower rate as appropriate by their actual experience.

Model year. Vehicle rates will also be a function of the vehicle's model year.

Because of the many new features of our program, we do get a lot of questions, and I have explained some of those questions today. I would like to answer any questions you might have about our program.

[The statement follows:]

STATEMENT OF SANFORD R. SQUIRES ON BEHALF OF COMMERCIAL UNION INSURANCE Cos.

Commercial Union thanks you for the opportunity to testify before this committee about our Custom Auto Program. The Custom Auto Program is a unique automobile classification plan developed by Commercial Union. One of its innovative aspects is that it does not use sex as a factor to classify and price automobile insurance policies.

Commercial Union is a stock agency company with corporate headquarters in Boston. We are licensed to write all forms of property casualty insurance business throughout the United States. We are the U.S. operations of a London-based parent, Commercial Union Assurance Company plc, which employs 22,800 people in 900 offices located in 80 countries. Our parents assets are over \$5 billion.

We have been part of the American insurance industry for more than 100 years, and today offer multiple lines of insurance in nearly 100 locations. Our staff of more than 8,000 serves a national network of independent agents to whose futures we are totally dedicated.

In 1981 we wrote more than 1.3 billion dollars in insurance premium. Our loss experience, as shown in our annual reports is better than the industry average. Our growth rate is one of the highest in the industry.

In the past several years, C.U. has invested in excess of 200 million dollars in products, marketing programs, automation, agency business plans, and other programs, to give our agents a competitive edge and secure future in the insurance business. The Custom Auto Program is one of our many innovative programs to support the American Agency System by providing sound, competitive, and efficient insurance systems.

Before I describe the Custom Auto Program, I think it appropriate to comment on Commercial Union's position on S. 2204.

We are opposed to S. 2204, because we do not believe that restrictive legislation in any form is needed or desirable.

We feel that the strong economic force of competition is the best form of regulation—far better than specific legislation in solving many economic and social issues. We believe the competitive forces in the insurance marketplace will lead to the desired result of this legislation—an absence of discrimination based on race, color, religion, sex, or national origin in the writing and selling of insurance policies. We believe there currently is no discrimination in the writing or selling of insurance policies by Commercial Union or any other company on the basis of race, color, religion, or national origin. There is some difference in the pricing of insurance policies by sex a subject directly addressed by S. 2204, but no other difference in writing or selling of policies.

Commercial Union is the largest of several insurance companies who have introduced automobile insurance rating plans which do not utilize sex as an explicit rating variable. Our introduction was motivated by competition, not legislative or regulatory mandate. I am attaching a speech given by one of our executives in introducing Custom Auto to our agents. The speech highlights the competitive spirit of Custom Auto.

We feel that other major companies will follow our lead in the future because of competitive needs. It is clear to us that regulation and legislation in general, tend to decrease the competition and innovation because they place restrictions on companies' ability to act quickly and introduce, adapt, or correct innovative ideas. To the

extent the current overregulation of insurance is decreased, the competitive forces of the market place will tend to operate more quickly to produce the desired benefit to consumers.

The development of the Custom Auto Program was the result of an original analysis in 1977 by Commercial Union staff on the subject of automobile risk classification. The goal was to reassess automobile classification variables in an effort to develop a new class plan which allow C.U. to compete effectively for business while achieving wide acceptance from insurers and regulators, and maintaining consumer equity.

In our research we tried to objectively evaluate an extensive list of possible rating variables against a list of six criteria which we felt were important for classification variables to meet.

The outcome of this research was the decision to develop and implement the Custom Auto program. We feel that this program offers a classification structure as efficient as any in effect today. Additionally, we believe this plan has increased consumer acceptance of the method by which insurance premiums are determined.

The most notable distinction between the Custom Auto Program and the more traditional classification plans used by most companies is that age, sex, and marital status are not used as rating variables under our program. While these variables are statistically valid predictors of loss experience, we are convinced that these differences can be recognized through use of other, more socially acceptable, variables.

We added several new variables to the Custom Auto Plan, and made major improvements compared to the way these are used in existing plans. We introduced several distinct categories of annual mileage. We introduced a claim free credit to reward good drivers. We made major changes to the way in which vehicles are classified for damageability. We made many more changes, too. In short, Custom Auto is much more than just a program which doesn't use age, sex, and marital status.

The Custom Auto Program is now filed and in effect in 40 States. In those States where it has been introduced it has met with an enthusiastic response from policyholders and agents. Countrywide premium volume in the program is about \$63 million through the first half of 1982. Premium writings continue to grow at a very rapid pace.

In our research we developed six criteria we felt provided a good measure of the appropriateness of a risk factor's validity.

(1) Casualty—Cause and effect relationship should exist between a risk factor and the potential for loss.

(2) Homogeneity—The application of a factor should result in groupings that are homogeneous.

(3) Incentive Value—Risk factor should provide incentives for loss reduction that are within the control of the insured.

(4) Social Acceptability—A risk factor should be generally acceptable to the insuring public.

(5) Practicality—A risk factor should be readily measurable and useable.

(6) Verifiability—A risk factor must be able to be verified.

Having selected these six criteria, we evaluated several dozen potential rating factors. We found that eleven of these factors were suitable for the Custom Auto Program. They are as follows:

(1) Driving Experience. This factor measures the number of years a person has been licensed to drive. The inexperienced operator under our program will receive a higher rate than the experienced operator. This factor replaces age of operator as a rating variable which is currently used by most companies.

(2) Vehicles use. This factor measures the conditions under which a vehicle is operated. Commuting and business risks pay a higher premium than the average pleasure risk.

(3) Annual mileage. This factor measures the vehicle's relative exposure to loss. Those vehicles which have a greater annual mileage will receive a higher rate under our program than those vehicles with lesser annual mileage.

(4) Vehicle's owner/principal operator. This factor was retained from the traditional classification approach. Premiums will vary depending upon the inexperienced operator's degree of use of the vehicles.

(5) Driving record. Those drivers with a history of accidents and convictions will receive a higher rate than the driver with an exemplary driving record.

(6) Claims history. Those policyholders with a superior claims record with our companies will receive a discount in recognition of their experience.

(7) Vehicle safety devices. Those vehicles equipped with anti-theft and passive restraint devices will receive credits to their premium.

(8) Driver training. Those inexperienced operators who have the benefit of driver training will receive a lower rate under our program.

(9) Territory, including territory of principal use. Rates will vary depending upon the territory of garaging. This is the traditional approach by recognizing the vehicle's territory of principal use. Those vehicles which regularly commute into rating territories other than their garaging territory will receive a rate which reflects the relative exposure of both the garaging territory and the commuting territory.

(10) Vehicle make and model. Our program expands upon the traditional method of rating vehicles based solely on cost-new. Our program recognizes that some vehicles are more crashworthy and cost less to repair than the average car. These cars are recognized in our program and receive a higher or lower rate as appropriate.

(11) Model year. Vehicle rates will also be a function of the vehicle's model year.

Because of the many new features of our program, we get a lot of questions. We have been asked how our class plan can survive when statistics show a difference in insurance costs between males and females. The answer is complex and requires some knowledge of automobile loss-cost and premium statistics.

Even though we don't explicitly use sex, we do see average premiums that are higher for males than females. This is not surprising. For example, we surcharge those individuals who have prior at fault accidents. Males, on the average, have more prior at fault accidents than females. The greater frequency of these surcharges on males gives them a higher average premium.

There are many other variables which are correlated with sex and will produce differences in premiums by sex. Among these are: annual mileage, make and model of car, age of car, policy coverages chosen, and many more.

Although these relationships can make analysis quite complex, they are sufficiently powerful to be effectively utilized in a classification system in which sex of an operator can safely be ignored. In our markets, with our agents, with the specific features built into our plan, we do not need to use sex as a rating variable.

Our Custom Auto program's distribution of drivers by sex is extremely close to the sex distribution of drivers in the U.S. Our loss ratios at each year of experience (age) show no important difference by sex.

We would emphasize that these results have been achieved only after careful thought and analysis in constructing our class plan. We did not simply eliminate sex as a rating variable arbitrarily.

Our innovations in the Custom Auto Program are a result of a significant amount of research and effort. We were motivated by a spirit of competition. Because S. 2204 is legislation which will impose restrictions on insurance companies, we are opposed to it. We believe the best answers to current economic, social, and political problems in insurance are achieved through greater freedom of companies to innovate and compete.

Thank you.

Commercial Union Insurance Co.—States with custom auto at June 1982

Alabama	Kentucky	Oklahoma
Arizona	Louisiana	Oregon
Arkansas	Maine	Pennsylvania
California	Maryland	Rhode Island
Colorado	Michigan	South Dakota
Connecticut	Minnesota	Tennessee
Delaware	Mississippi	Utah
Florida	Missouri	Vermont
Georgia	Montana	Virginia
Idaho	Nebraska	Washington
Illinois	Nevada	West Virginia
Indiana	New Mexico	Wisconsin
Iowa	New York	
Kansas	Ohio	

The CHAIRMAN. Well, it was your program I was making reference to earlier, when I looked at all the criteria in considering my automobile insurance. But let me ask you a question: Vehicle owner, principal operator. My wife and I have two cars. However, because I have had cataract operations and cannot see at night, I do not drive to work. Somebody drives me, because we are here at night and I cannot drive home. So the car that might be called

mine gets maybe 2,000 or 3,000 miles a year of use, and she puts more mileage on than I do. She will drive mine if hers is being repaired, and she drives hers all the time.

I would assume that would be a factor in rating. It is not driven downtown to work and indeed is not driven much at all. And she is the principal driver of both of the cars rather than me.

Mr. SQUIRES. Those are all factors in rating and you would probably receive lower rates under our plan.

The CHAIRMAN. Now do you sell normal auto insurance in addition, based upon sex and age and things like that, or is this your sole policy that your company—or form of rating I should say. Is this the form of rating for all your auto insurance?

Mr. SQUIRES. Currently, through 6 months of this year we have about \$63 million in written premiums under this program. We still have policies under the old programs which have age, sex, and marital status. We are in the process of converting those policies in each State as we go along to our custom auto program. Our goal is to have all our automobile insurance written on custom automobile.

The CHAIRMAN. You are obviously a fairly sizable insurance company with 8,000 employees you said in the United States, or agents; I am not sure what their legal relationship is to the company; and a fair amount of insurance. Do you belong to either the American Insurance Association or the Alliance?

Mr. SQUIRES. We belong to the American Insurance Association.

The CHAIRMAN. You heard what Mr. Bernstein said earlier. Mr. Bernstein, you may answer this if you want. Is his company's policy unfairly throwing costs some place where they should not be, that you talked about these costs, and who is going to pay them? Is his policymaking policyholders unfairly picking up those costs?

Mr. SQUIRES. Maybe I could start on the answer to that. I agreed with a lot of Mr. Bernstein's testimony in terms of an insurer must always recognize the costs. As I stated in the summary of my testimony, we do see differences in the premiums we charge to males versus females, even though we do not explicitly use sex as a rating variable.

We are trying to price people as accurately as we can under our plan, and in that respect I guess I would agree with some of Mr. Bernstein's remarks.

The CHAIRMAN. But what you also have on your basis, Mr. Hunter's 28 percent of the good males would be ranked as good because they are good, not bad because they are males.

Mr. SQUIRES. I really do not agree with the methodology that goes into Mr. Hunter's 28-percent overlap theory. That is a statistically flawed way of reasoning.

The CHAIRMAN. Scratch the percentage. You would rate people individually on your policies. On the averages you would come out with policies being higher for males because of the factors you have rated, not because they are males per se.

Mr. SQUIRES. That is right. We do not explicitly use sex as a rating criteria. On average, males do pay more than females do.

The CHAIRMAN. I want to ask Mr. Bernstein: Is this policy unfair? If all companies did this, you talked about these additional

costs and who will pay them. Is his kind of policy forcing costs unfairly on somebody?

Mr. BERNSTEIN. His company is one company that has made a judgment in the area of underwriting classification, that it can identify risks in a way that is different from other companies. No one has forced his company to do it, and no one forces policyholders to buy from him. You pay your money, you take your choice. That is perfectly fine as long as that company does it. A point may come when all companies—

The CHAIRMAN. My question is, you almost indicated it was unfair and you were going to force these additional costs. Is his company, from a social standpoint, writing an unfair policy?

Mr. BERNSTEIN. Of course not. But it would be unfair for someone to force his company to write that and only offer that option to the public.

The CHAIRMAN. His testimony is clear. He is opposed to the bill. He is opposed to the Government forcing his company to write this kind of policy. But your objection is more than just the Government forcing it. You are saying to write those kind of policies is almost immoral.

Mr. BERNSTEIN. I say it is unfair for the Congress of the United States to say that if the statistics show x , that you, insurance company, must ignore them. I do not believe it is unfair for a single company to say, "we disagree with those," as long as that company is regulated by a State law that prohibits unfair discrimination, which all of the State laws do, and under the State law of that State it is judged that that company has made a valid underwriting judgment.

I would not make that judgment. Ninety-nine percent of the companies in the American Insurance Association would make a different judgment. But that company has a right to make its judgments.

The CHAIRMAN. Let me ask again, Mr. Squires, so I can make sure. Indeed, you see a statistical consistency: Males pay higher premiums than females. But your rating system is not based on males and females. You go through those 11 categories, you write the policies accordingly, and if more males pay more premiums so be it. That is the way the factors come out.

Mr. SQUIRES. Under our system now, we do not explicitly use the recognition of male and female. There is a correlation in premiums. We achieve equal loss ratios for males and females throughout the individual years of experience spectrum, which is in essence an age spectrum used by other insurers.

The CHAIRMAN. I take it this approach for your company is proving to be very commercially successful?

Mr. SQUIRES. In personal lines of insurance we are one of the fastest growing companies in the United States. As a matter of fact, with all the testimony by all the different groups here who seem to feel that they would prefer a system that does not use sex as an explicit classification variable, I would very much like them to express their opinion by buying insurance from Commercial Union.

The CHAIRMAN. Has the adoption of this gender-neutral system of yours caused extraordinary expense to the company? Obviously not disproportionate expense or you would not have done it.

Mr. SQUIRES. We have spent quite a good deal of money getting this implemented. A great deal of the expense is dealing with each individual State regulator, presenting the program to him, presenting it to our agents, our regional offices, changing our computer systems. There is a lot of expense that has gone into research.

The CHAIRMAN. This is startup expense, basically.

Mr. SQUIRES. This is one of many innovative products Commercial Union has introduced in different lines of insurance. Our annual statement shows we have spent over \$200 million developing new products for the insurance industry. We hope that the rest of the insurance industry will follow our lead and will try to compete and will also develop new products. We think this is the best, the soundest way to go about things.

The CHAIRMAN. Ms. Kirkpatrick, without getting into the argument of whether the Government should or should not force this, and even Mr. Squires is opposed to the government forcing it, is the kind of policy that his company writes unfair? Is it throwing costs on somebody? Is it causing women to have to pay more for insurance?

Ms. KIRKPATRICK. One thing that must be remembered, is that we are only talking about one company. Presently, individuals can apply to a number of companies, including Commercial Union, for automobile insurance. Each insurer can then decide whom they wish to insure and can quote a price for the coverage. The potential insured can compare the quotes and select the best coverage, at the best price, for themselves. If S.2204 becomes law, all companies would be forced to eliminate sex as a factor and high risk males would be forced into assigned risk plans.

The CHAIRMAN. Well, but for a person in an assigned risk plan, it does not really matter if you are writing the kind of policy that Mr. Squires is writing or not. All the insurance companies can turn down whoever they do not want.

Ms. KIRKPATRICK. But you always have the potential for going to another company. If, however, S.2204 eliminate, the use of sex as a classification factor, then many males, probably a disproportionate share of males would go into an assigned risk plan, and that would raise their insurance rates. I do not think unfair is the right word. We are comparing apples and oranges. Commercial Union is merely one insurance company. But if S.2204 becomes law all individuals will be thrown into the same category.

The CHAIRMAN. You are from Massachusetts, and Massachusetts has passed an antisex discrimination insurance law, have they not?

Mr. SQUIRES. Yes; they have.

The CHAIRMAN. Do other companies that write automobile insurance in Massachusetts have to go through roughly the same kind of standards you do? If they cannot base it on sex, what do they do?

Mr. SQUIRES. The Massachusetts restrictions are far more restrictive. We could not introduce our custom auto program in Massachusetts because of the additional restrictions in Massachusetts. It may be a little bit out of place to use Massachusetts as an example because I think that the market problems in Massachusetts have more, deeper rooted fundamental causes than just the prohibition of sex as a rating variable. Massachusetts has also prohibited age

and marital status. Massachusetts has a large involuntary market that is called a facility.

The CHAIRMAN. A large involuntary market?

Mr. SQUIRES. Involuntary market. The problems in Massachusetts in my opinion are not just sex-related. Sex is a very small part of it.

The CHAIRMAN. Let us go to one of the other States that has the antisex discrimination provisions. Which States are those?

Mr. SQUIRES. Hawaii is one. Hawaii also happens to prohibit the use of age and years of driving experience. So Commercial Union's plan could not be introduced there. North Carolina, Michigan. We have a modified version of our custom auto plan in Michigan.

The CHAIRMAN. Any one of you can answer this that know it. In those States, assuming companies want to operate in the property casualty business, do they have to go through some kind of a thinking process like Commercial Union? If they cannot rank on sex they have to have some basis for selling. Do they go through that kind of a process, whether it is these factors or not?

Mr. BERNSTEIN. Obviously, if you are denied your favorite classification system you use whatever is available. So companies are forced to use what may be characterized by some as inferior surrogate rating standards.

Interestingly, that does point up the mileage question which I think should be responded to. Mr. Hunter referred to mileage being a factor. In every classification of mileage, whether it is 1,000 to 5,000 a year, 5,000 to 10,000, and on up, women have better driving experience than men. So just going to mileage is not going to replace sex as a class.

It is not true to say that women have better experience just because they drive less than men. That is not a fact. That is one surrogate that is not available.

Companies will obviously use whatever is available and make the best of it when they are denied the right to use statistics and that in what they have done in States like Massachusetts. But the results have been disastrous.

If you deal with a situation like North Carolina, I think something like 35 percent of the drivers are in the residual market in North Carolina. It is another disaster. Interestingly enough, this situation of going to unisex rates has been advanced almost as a hoped-for panacea in States that had hopeless automobile insurance situations.

The CHAIRMAN. Then you agree with Mr. Squires that the problem in Massachusetts is not that they went to nonsexual discrimination. They had problems long before they got to that, apparently.

Mr. BERNSTEIN. Except it has gotten worse than that. I think the residual market jumped to well over 40 percent from something like 25 percent after this was instituted.

The CHAIRMAN. And because it was instituted?

Mr. BERNSTEIN. Yes, sir.

Mr. HUNTER. No.

The CHAIRMAN. Mr. Hunter, no?

Mr. HUNTER. Massachusetts from the point of view of consumers is not as bad as from the point of view of the insurance industry. People in the involuntary market in Massachusetts pay the same

rate as if they were just accepted by their company. They can go to the company of their choice and select the coverage they want and by law can get it if they have a good driving record.

The CHAIRMAN. Do they pay a high premium?

Mr. HUNTER. No.

The CHAIRMAN. They do not?

Mr. BERNSTEIN. On the contrary, they do if they have to go through a broker who is not an agent for a given company. So, a large percentage of the market in Massachusetts is not written at the same rate in the rating facility, even though theoretically it could be.

The CHAIRMAN. That is because they go through a broker.

Mr. BERNSTEIN. That is the point. A large percentage of the markets in our country is not written through agents, it is written through brokers. So, you do not solve the problem by saying that anyone who can find an agent that will write them can get insurance at the same rate, when a large percentage of the market has to end up with a broker. That is a fact of life, and the type of facts of life which this legislation does not recognize.

The CHAIRMAN. Mr. Hunter?

Mr. HUNTER. That is an information problem. When the people recognize that they can get the coverage without going through a broker but going directly to the companies, they can overcome that. But besides that, on the question of mileage, the average female drives about one-half the miles of the average male. It may be true that if you look at the matching—we have already heard arguments you should not do this matching without looking at the overall averages—the overall average female drives one-half the miles of the average male.

I think a lot of the difference in cost is because of the over-the-road exposure, which makes sense.

The CHAIRMAN. I have no more questions. Call me up, Mr. Squires, and let me run my factors by you.

Mr. SQUIRES. Thank you. We would love to have you as a policyholder.

The CHAIRMAN. You bet.

We will conclude with the life, annuity, health, disability panel: Barbara Lautzenheiser, Barbara Bergmann, Robert Freeman, Jo Ann Sher, and Elizabeth Morrison.

STATEMENTS OF BARBARA LAUTZENHEISER, SENIOR VICE PRESIDENT, PHOENIX MUTUAL LIFE INSURANCE CO.; JUDY NORRELL, ASSOCIATE GENERAL COUNSEL, AMERICAN COUNCIL OF LIFE INSURANCE; DR. BARBARA BERGMANN, ECONOMICS PROFESSOR, UNIVERSITY OF MARYLAND; ROBERT FREEMAN, PRESIDENT, CONSUMERS UNITED INSURANCE CO.; JO ANN SHER, VICE PRESIDENT, CORPORATE LEGAL DEPARTMENT, TEACHERS INSURANCE AND ANNUITY ASSOCIATION, COLLEGE RETIREMENT EQUITIES FUND; JOHN SNORE, VICE PRESIDENT, UNDERWRITING, PRUDENTIAL INSURANCE CO., REPRESENTING HEALTH INSURANCE ASSOCIATION OF AMERICA; AND ELIZABETH MORRISON, MANAGER, FINANCIAL SERVICE DEPARTMENT, HERGET

Ms. LAUTZENHEISER. My name is Barbara Lautzenheiser. I am a fellow of the Society of Actuaries, a member of the American Academy of Actuaries, and senior vice president of Phoenix Mutual Life Insurance Co. I have worked in an actuarial capacity for over 20 years, and for approximately 8 to 9 years I have been working on this particular issue.

I am accompanied here today by Judy Norrell, associate general counsel of the American Council of Life Insurance, Washington, D.C. We are appearing on behalf of the American Council of Life Insurance and its members.

We appreciate your giving us this opportunity to comment on S. 2204. We would like to begin with a brief statement by Ms. Norrell addressing an issue which has been perceived to be related to S. 2204, but which in reality is not.

Ms. NORRELL. Thank you. Robert Froehlke, our president, had planned to be here. He had to leave, and he apologizes. We appreciate the opportunity for us to address you.

There has been a considerable amount of disinformation going on that tries to tie together the equal rights amendment, the insurance business, sex discrimination, and risk classification. The life insurance industry is deeply concerned by this activity and feels that it has been damaged by the untrue allegations which have been levied against it. We, therefore, welcome the opportunity to offer a brief response.

The American Council of Life Insurance, which represents 550 life insurance companies accounting for 95 percent of the life insurance in force, and is thereby the industry's major trade association, does not oppose the equal rights amendment. The ACLI, which generally does not speak out on noninsurance issues, has taken no position on ERA, but I assure you it has not spent one penny aimed at killing the equal rights amendment.

Moreover, many people in life insurance actively support the equal rights amendment. In fact, many life insurance companies contribute to women's organizations, a number of which fought for ERA.

The CHAIRMAN. I do not want to deter you, but I have not made any allegations that you oppose the equal rights amendment. I do not think Senator Hatfield has. You are welcome to talk to that if you want.

Ms. NORRELL. Well, there have been some allegations made. We did want to be sure for purposes of the discussion today on S. 2204 and on risk classification that the issues were not confused and that our position was clear that we do not consider the risk classification issue part of the women's issue, basically. Certainly, we do not want the two confused. We want to be clear on risk classification.

The CHAIRMAN. Let's be clear on equal rights. We want to keep on the topic of insurance. I will be happy to have the record show that your association does not oppose the equal rights amendment.

Ms. NORRELL. Thank you. On the other hand, as Ms. Lautzenheiser will testify, we do have a position, and we welcome the opportunity to discuss our position on S. 2204 and on risk classification.

Ms. LAUTZENHEISER. Thank you. We do oppose the enactment of S. 2204. Our member companies do not discriminate on the basis of race, color, religion, or national origin, and do not discriminate on the basis of sex with regard to the availability of coverage. Therefore there is no need for this legislation in these regards.

On the other hand, there is a need to be able to reflect mortality differences between the sexes in pricing life insurance and annuity products, and this legislation would do harm in prohibiting the recognition of these differences.

Before going into the details of my statement, I wish to correct some misstatements made in the introduction of S. 2204. For example, it was stated, "In life insurance coverage for women, it is often limited in scope and availability." Differences by sex in availability of coverage are prohibited by law or regulation in some 20 States and to our knowledge life insurance companies are essentially following this in all States. It is just good business. Women are a good market. The potential for new sales is great, and we can offer life insurance to women at a lower rate than we can to men. To do so makes good business sense.

It was also implied that life insurance companies give women less allowance in life insurance for their superior longevity than they give men in annuity pricing. That statement is out of date. Model legislation adopted by the National Association of Insurance Commissioners in 1980 and now being enacted by the States—and I believe it has been enacted by some 30 States now—will, we believe, result in virtually every company's using life insurance premium rates which fully reflect women's better mortality.

There have been those here today who have questioned whether or not that better mortality actually exists. I suggest that if anyone questions it they visit a nursing home and take a look at how many women are there as opposed to men being there.

It was also stated, "The insurance industry has virtually ignored other more accurate classification criteria, such as smoking habits, family health history, physical condition, recreational, and occupational activities."

Quite to the contrary. All of those criteria are used in the rating of an individual life insurance policy. Anyone who has applied for life insurance, filled out the application, and taken the physical knows full well that those criteria are actually used.

It was also stated that life insurance companies have been able to ignore mortality differences among persons classified by other criteria. These criteria are basically surrogates for characteristics such as health and occupation, which we do pay attention to. That situation is contrasted with the sex characteristic, which is a significant factor even before the child is born. The rate of stillbirths after the fifth month of gestation and the death rate during the first week of infancy are significantly higher for male babies than female babies. This would not be the case were sex merely a surrogate for other factors.

There were also statements that classification by sex is a convenience, not a necessity, and its prohibition might require "minor cost adjustments." I do not consider individual life insurance premium rate increases of 10 to 25 percent for an individual woman or a \$360 million cost shifting between males and females, which the American Academy of Actuaries spoke to, as a minor cost adjustment.

In the pension area, Albert B. Lewis, superintendent of insurance of New York State has said:

The magnitude of the estimated cost of equalizing the results of sex-distinct tables as of the date of *Manhart* to the State of New York funded pensions may be sufficient to bankrupt the State and its political subdivisions. It will require: approximately \$300 million to fund the New York State Teachers Retirement System; approximately \$800 to \$900 million to fund the New York State Employees Retirement System; approximately \$800 to \$900 million to fund the New York City Teachers and Employees Retirement Systems. These funds, totaling approximately \$1.9 to \$2.1 billion, would have to come from the financially strapped State and local governments and school district budgets and taxpayers.

These are not minor cost adjustments.

A life insurance company cannot afford to offer policies to all purchasers at the same price. If it did, persons who knew they were likely to die very soon would buy significantly large amounts very quickly, and people who felt fairly healthy would not buy. Either the company would go broke quickly or it would have to raise its premiums high enough to cover the worst risk. If it raised its premiums too high, the good risks would not buy. We would have what is called "adverse selection." Adverse selection is natural behavior, and one we expect to encounter in the free market system.

And you cannot just have two classes of risks. You have to have more than that, because having only two would cause all sorts of adverse selection within those classes as well. You have to have a classification system under which individuals are put in a class where their degree of risk is as close as possible to that of others in that same class. That is the best approximation that we can give to each individual's true cost in an insurance plan.

Competition reinforces the operation of this principle. If one company believes that individuals having a certain characteristic are being overcharged, it can come up with special rates for that particular characteristic, and thus become more competitive. This actually happened with respect to cigarette smoking. A few companies, after studying the 1964 Surgeon General's Report on Smoking and Health, decided to lower their premium—

The CHAIRMAN. I am going to stop you. You are reading your entire statement. It is about 22 pages long. I cannot let you go on with that statement when I have already read it. I have asked all

the witnesses to summarize, and make your major points. I let you go on because I have let others, but if I let you read the entire statement, it will be about 30 minutes.

Ms. LAUTZENHEISER. The move was actually an experiment with respect to nonsmokers. For approximately 15 years, very few companies had the nonsmoker rates. It was not until one large company published its experience under its new rates that other companies followed it. Within a year and a half a very short period of time, almost all other companies developed nonsmoker rates.

Maybe rather than reading through my statement I should stop for certain types of questions, if you would prefer.

The CHAIRMAN. I am going to let the panel finish. I have a number of questions. I am going to let the panel collectively address itself.

Ms. LAUTZENHEISER. I am trying to look through here and see if I can identify any particular element that I think is especially significant or which needs an addition to it.

The major concern that I have is that this bill will not end up benefiting the buying public; that we will end up with a system of insurance which is a subsidy system; that people will not have the opportunity to purchase insurance at the rate most closely related to their individual characteristics; and hence there is an element of freedom, an element of option, an element of correct pricing that is no longer available. Correct cost-based pricing will be eliminated, and not only will it be a disadvantage to the insurance companies, but will be a major disadvantage to the consumers who buy from them.

[The statements follow:]

STATEMENT OF JUDY NORRELL ON BEHALF OF THE AMERICAN COUNCIL OF LIFE
INSURANCE

There is a considerable amount of disinformation going around that tries to tie together the Equal Rights Amendment, the insurance business, sex discrimination and risk classification.

The life insurance industry is deeply concerned by this activity and feels it has been damaged by the untrue allegations which have been leveled against it. We therefore welcome this opportunity to offer a brief response:

The American Council of Life Insurance, which represents 550 life insurance companies accounting for 95 percent of the life insurance in force and is thereby the industry's major trade association, does not oppose ERA.

The ACLI, which generally does not speak out on non-insurance issues, has taken no position on ERA. But I can assure you, we have not spent one penny aimed at killing ERA.

Moreover, many people in life insurance support ERA. In fact, many life insurance companies contribute to women's organizations, a number of which are at the forefront of the fight for ERA.

Sex discrimination and risk classification are frequently confused. They are not the same issue. Here is how we understand the two: When the premium charged is directly tied to the risk posed by an individual or group of people, that is risk classification. If an individual or group were to be charged more than another person or group posing the same level of risk, that would be unfair discrimination.

If premiums are not tied properly to the risk posed by an individual or group, then the premiums should be changed.

I repeat, the ACLI is not opposed to ERA. At the same time, we believe that true risk classification is the fairest system for all concerned.

STATEMENT OF BARBARA J. LAUTZENHEISER ON BEHALF OF THE AMERICAN COUNCIL OF
LIFE INSURANCE

S. 2204

My name is Barbara Lautzenheiser. I am a Fellow of the Society of Actuaries, a member of the American Academy of Actuaries, and Senior Vice President of the Phoenix Mutual Life Insurance Company. I have worked in an actuarial capacity for over 20 years and have been heavily involved in sex discrimination issues in insurance in the last eight of those 20 years.

I am accompanied here today by Robert F. Froehlke, President of the American Council of Life Insurance, Washington, D.C.

We are appearing on behalf of the member companies of the American Council of Life Insurance. The Council consists of 550 insurance companies, which have 95 percent of the life insurance in force in legal reserve life insurance companies in the United States.

We appreciate your giving us this opportunity to comment on S. 2204.

SUMMARY OF STATEMENT

We oppose the enactment of S. 2204. Our member companies do not discriminate on the basis of race, color, religion, or national origin, and do not discriminate on the basis of sex with regard to the availability of coverage. Therefore, there is no need for this legislation in these regards. On the other hand, our member companies need to be able to reflect mortality differences between the sexes in pricing their life insurance and annuity products, and this legislation would do harm in prohibiting the recognition of those differences.

CORRECTING THE RECORD

Before going into the details of our statement, I wish to correct some misstatements that were made when S. 2204 was introduced. For example, it was stated: "In life insurance, coverage for women is often limited in scope and availability." Differences by sex in availability of coverage are prohibited by law or regulation in twenty states. To our knowledge, life insurance companies are complying with that prohibition in all other states as well—it is just good business. Women are a good market—the potential for new sales is great—and we can offer life insurance to women at a lower cost than to men.

It was also implied that life insurance companies give women less allowance in life insurance for their superior longevity than they give men in annuity pricing. That statement is out-of-date. With the enactment in all the states of model legislation adopted by the National Association of Insurance Commissioners in 1976, it has become practical for companies to give full allowance in life insurance premium rates for women's lower mortality. Further model legislation adopted by the NAIC in 1980, now being enacted by the states, will, we believe, result in virtually every company's using life insurance premium rates which fully reflect women's better mortality.

It was also stated: "The industry has virtually ignored other, more accurate classification criteria, such as smoking habits, family health history, physical condition, recreational and occupational activities." Quite to the contrary, all those criteria are used in the rating of individual life insurance policies. Anyone who has applied for life insurance, filled out an application and taken a physical examination knows that all of these facts and more are taken into consideration.

It was stated that life insurance companies have been able to ignore mortality differences by level of education and by marital status without disruption, and that those differences are greater than the differences by sex. The data we have seen show relatively small differences by level of education for those with at least a high school education. In any event, education or marital status are surrogates for other characteristics, such as health and occupation, which life insurers do use and on which they have data. That situation may be contrasted with the sex characteristic, which is a significant factor even when individuals with other significant characteristics, such as poor health or a hazardous occupation, are removed from the data. Mortality differences by sex exist prior to birth, and in the first weeks after birth. This would not be the case if sex were merely a surrogate for other factors.

There were also statements that classification by sex is a convenience, not a business necessity, and that its prohibition might require "minor cost adjustments." I will respond to those assertions further on in our statement. I do not consider individual life insurance premium rate increases of 10 percent to 25 percent as a minor

cost adjustment. In the pension area, Albert B. Lewis, Superintendent of Insurance, New York Insurance Department, said:

"The magnitude of the estimated cost of equalizing the results of sex-distinct tables as of the date of *Manhart* to the State of New York funded pensions may be sufficient to bankrupt the state and its political subdivisions. It will require:

"Approximately \$300 million to fund New York State Teachers Retirement System.

"Approximately \$800 to \$900 million to fund the New York State Employees Retirement System.

"Approximately \$800 to \$900 million to fund the New York City Teachers and Employees Retirement Systems.

"These funds, totaling approximately \$1.9-\$2.1 billion, would have to come from the financially strapped state and local governments and school district budgets and taxpayers."

SETTING PREMIUM RATES IN THE LIFE INSURANCE BUSINESS

A life insurance company cannot afford to offer policies to all purchasers at the same price. If it did so, it would find that some came running, while others held back. Persons who knew they were likely to die soon would buy as much life insurance as they could, and persons who felt very healthy would buy very little.

Either the company would go broke quickly, or it would have to raise its premium rate high enough to cover the worst risks. If it raised its premium rate that high, the good risks would refuse to buy at all. That kind of behavior by the public is called "adverse selection." It is an entirely natural type of behavior, and one which we expect to encounter as long as we have a free market system.

The way out of the above situation is to charge different premium rates to the good and bad risks. It will be found, however, that having one rate for "good" risks and one rate for "bad" risks is not enough. That is because using only two rate classes would make the classes too broad, and within the two rate classes the same type of adverse selection would occur. The rate classes have to be narrow enough so that nobody is being significantly overcharged or undercharged. Under such an approach, individuals are put in a class where their characteristics are as close as possible to others in the same class. This is the best approximation life insurance companies can make to setting a separate price for each individual based on the risk he or she represents.

Competition reinforces the operation of the above principle. If one company believes that persons with a certain characteristic are being overcharged, it can establish special, lower premium rates for persons with that characteristic. If the classification is valid, and if other companies do not follow suit, the company with the special lower premium rate will get the better risks and the other company will end up getting risks that are worse than average.

This type of thing happened recently with respect to cigarette smoking. A few companies, after studying the 1964 "Surgeon General's Report on Smoking and Health," decided to lower their premium rates for non-smokers. That move was an experiment in a real sense, because there existed no mortality data on people who had been insured at favorable rates on the basis that they were non-smokers.

When the mortality experience among the smokers and non-smokers insured by one large company was published, their classification was shown to be valid. Within a year and a half many, or most, companies now have separate life insurance premium rate scales for smokers and non-smokers of cigarettes.

There was a period of time when most, if not all companies were charging the same life insurance premium rates for women and men. During that time the difference in mortality rates between women and men in the United States population was relatively small. Also, women were not buying much life insurance.

Changing circumstances following World War II in both these areas led to a change in practice. First, the mortality difference by sex in the general population had become larger than before and was continuing to widen. Second, with women taking a larger role in the economy than before, it became evident that they would become an increasingly substantial potential market for life insurance. These two developments gave companies reason to establish separate rates for the two sexes, which most of them did in the 1950's. The lower rates which have been charged for women since then have, no doubt, contributed to the impressive growth in life insurance purchases by women in the last two decades.

In other areas of risk classification, too, insurance companies are constantly reviewing and updating their classifications. For example, they must be aware of changing patterns in the mortality associated with various physical impairments,

which occur because of progress in medical treatment, public health measures, lifestyles, etc.

Since most companies began to charge different life insurance premium rates for women and men, they have been keeping track of their insureds' mortality experience for each sex separately. The data tabulated for about twenty large companies each year have shown a substantial difference by sex. Specifically, mortality rates for the women have been consistently about 60 percent of the men's in each of the last 15 years. That means that only about 60 percent as many women died each year as would have died if they had experienced the same mortality rates, age by age, as did men.

Among annuitants, the observed differences in mortality rates between men and women are also significant. The latest published experience of 15 large companies under single-premium immediate individual annuities has shown women's mortality equal to about 70 percent of the men's. Of course, in the case of annuities the mortality difference leads to lower purchase rates for men than for women. It costs more to provide 100,000 women aged 65 with lifetime benefits of \$100 per month than it does to provide 100,000 men aged 65 with the same monthly benefits. In fact, over the fifty years, or so, that payments would be made, the payments to the surviving women would total 23 percent more than the payments to the men.

The mortality differences we have cited above are significant. They are not "minor cost adjustments." They are enough to give a company that reflects them in its premium rates a competitive edge over a company that does not and the consumers who buy them, better buys than they would have had had that difference not been allowed. Thus, this bill would adversely affect both the companies and their customers.

It has been asserted that other characteristics are more directly related, on a causal basis, to life expectancy than is sex. Causality is not a prerequisite to a valid classification system, but there is evidence of causality based on sex. Perinatal mortality rates (i.e., stillbirths occurring beyond the 20th week after conception and deaths in the first week of infancy) show a 20 percent higher mortality rate for males than for females. Such differences cannot be explained by other than biological differences. Geneticists, too, feel these differences are biological, stemming from different chromosome structures of the two sexes. Recent medical research has found some of the mortality differences between the sexes to be due to the different levels of production of prostaglandins between the sexes. All of these point to a biological basis for mortality differences between the sexes. Appendix I to our statement discusses in further detail the validity of sex as a mortality classification.

The introduction to the bill asserts that the states have done nothing regarding the premium differential. Quite the contrary, the National Association of Insurance Commissioners (NAIC) has studied the recent mortality and morbidity experience under life insurance, annuity, and health insurance policies and found them to furnish a valid basis for distinguishing premium rates by sex. In December 1981, the NAIC adopted a resolution endorsing "the use of a risk classification system which appropriately reflects cost differences by sex or both cost differences by sex and distribution by sex as being in the best interests of buyers of insurance."¹

FAIRNESS IN LIFE INSURANCE PREMIUM RATES

S. 2204 would, among other things, prohibit the use of different premium rates for women and men in life insurance and annuities. The reason given is that such differences are unfair. Sex-based premium-rate distinctions are fair when they reflect in a straightforward manner the anticipated mortality differences. They don't reflect stereotypes—they reflect facts.

An insurance transaction is quite different from the typical situation in which unfair discrimination might be alleged. Suppose, for example, that a woman is applying for a job as a truck driver, with responsibilities to include loading and unloading heavy merchandise. It is known that women are, on the average, not as large or as physically strong as men of the same age.

In earlier times it may have been common not to accept women for a full range of truck delivery duties. Today, however, I think that we all agree that it would be unfair to turn down a woman for a delivery job on the grounds that she is a woman. If she meets the employer's standards for strength, as well as those for other attributes, she should be hired.

¹ In the course of adoption of the resolution a committee chairman noted that it reflected a professional opinion based on sound actuarial principles and was not intended to address any social or public policy issues relating to risk classification by sex.

Let's compare that situation with an application for life insurance. If we knew that a certain woman and a certain man are going to live for exactly the same length of time, then we would have every reason to charge them identical premium rates. Of course, we don't have, and can't get, that type of information.

All we know about the future longevity is the person's estimated chance of living year by year, based on what we know about the person. For example, if we know the person's age, we can make an estimate of the person's chance of living year by year on the basis of observed mortality rates for persons insured at the same age. If we know both the age and the sex, we can make an estimate of the person's chance of living year by year on the basis of observed mortality rates for people of the same sex insured at the same age. This estimate will be different from the one made on the basis of age alone, but it will be a more accurate estimate.

If we add other characteristics, such as occupation and state of health, we will get a still different estimate, which will be still more accurate. But the estimate will be the same for each person who has a given combination of characteristics. For example, if two women of the same age are both in good health, and neither of them smokes cigarettes, or has a hazardous occupation or avocation, or presents any other unusual feature, then we have no basis for saying that one of them has different estimated chances of living year by year than the other. Similarly, if there is another person who shares all of the above characteristics, except that he is male, then we must estimate his chance of living year by year as lesser than the women's.

The insurance situation contrasts strikingly with the truck driver situation. The trucking company can measure a person's strength to some degree of accuracy. It can appraise other attributes based on experience. Once it has done that, the sex of the applicant adds no significant information. For the life insurance company, however, knowledge of the applicant's sex provides significant information to help in making an accurate estimate of that person's chance of living year by year.

To force the insurance company to ignore the applicant's sex would be to force it to ignore a significant element of the cost of the product it is selling. It would prohibit the company from basing its prices on its expected costs.

A few critics have asserted that a sex classification in pensions is unfair because only a few women (about 17 percent) will outlive all men. Appendix II to our statement explains why this "overlap" theory is not relevant. A \$365 million difference in total benefits would be received by 100,000 women and 100,000 men each being paid \$1,000 per year is relevant in setting prices for annuities.

All of the United States have laws which prohibit the making of any unfair discrimination between individuals of equal expectation of life. We would regard as an unfair discrimination the charging of premium rates which differ by more than is justified by the differences in expected costs. A few states have promulgated regulations which spell out that concept. The NAIC, too, recognized that concept when it adopted the resolution we cited above. The internal document containing the NAIC resolution recommended that state insurance regulators review the relevant mortality data from time to time in order to be able to make sure that the companies reflect the data fairly in their premium rates.

We submit that straightforward reflection of mortality differences in premium rates does not constitute unfair discrimination.

FAIRNESS IN LIFE INSURANCE AVAILABILITY

There was once a time when it was harder for a woman to buy life insurance from many companies than it was for men in like circumstances. For example, a married woman may have been turned down for life insurance if her husband was not also insured, while the same would not happen to a husband whose wife was not insured. Such practices have ceased. In fact, in 1975 the American Council of Life Insurance supported the adoption by the NAIC of a model regulation prohibiting distinctions by sex in the availability of insurance (see Appendix III).

Twenty states have promulgated regulations based on the NAIC model. To our knowledge life insurance companies are complying with the requirements of the model in all states, including the states which have not yet promulgated a regulation on the subject.

We wish to point out that in light of the above, some of the remarks which were entered into the Congressional Record upon the introduction of S. 2204 are based on outdated, obsolete information. There is no need for additional legislation on this matter.

PROHIBITIONS REGARDING RACE, COLOR, RELIGION, AND NATIONAL ORIGIN

S. 2204 would prohibit certain insurance practices based on race, color, religion, or national origin, as well as sex. Life insurance companies do not make any distinctions on any of those other listed bases. Accordingly, there is no need for legislation concerning them.

ADVERSE EFFECTS OF S. 2204

As we have explained above, S. 2204 is premised on an inappropriate notion of fairness in insurance. Let us, however, take a moment to reflect on what might happen if S. 2204 were enacted.

Life insurance premiums for women are currently lower than men's by something over 10 percent on the average. S. 2204 would force the companies to adopt a single premium rate scale, which would be somewhere in between the two levels. Since, even after the growth in women's purchases over the last two or three decades, women's purchases are still only a bit over 20 percent of the total, the combined premium rates would have to be quite near the present male level. That is, they would have to be increased about 10 percent for the women. That might induce some women to buy less insurance, in which case the premium rates would have to be set even higher in order to cover the heavy admixture of males. That might discourage many women from buying any life insurance at all.

There would, perhaps, be some slight gain for the men when everything had finally settled down. For the women there would be the loss represented by the higher premiums paid by those who bought, and a different kind of loss represented by the lack of insurance coverage for those who chose not to buy or who bought less than they otherwise would have.

In the case of annuities there would be a similar effect, but in the opposite direction. There might be a slight gain for the women. For the men there would be losses through higher premiums for those who bought and losses of annuity coverage for those who did not buy.

The overall effect would be a reshuffling of premium dollars and a contraction of life insurance and annuity coverage. We do not see such a result as improving the services which our member companies are providing to the public.

RETROACTIVE EFFECT OF S. 2204

Thus far we have not discussed the retroactive feature of S. 2204. The effects of the retroactivity could be even more severe than the effects of prospective application.

Life insurers would be forced to equalize the premium rates and benefits of existing policies and contracts which involve obligations stretching over many decades. Here again, let us look at individual life insurance for an example of what we anticipate would happen.

While it is difficult to determine exactly what would be permitted if S. 2204 were enacted, let us assume that it would permit insurers to reset premium rates at levels somewhere between the rates for men and the rates for women. This would mean an increase for women who had purchased life insurance contracts with guaranteed rates. A premium rate increase of the magnitude that would be necessary to produce the average rate for policies on the lives of women and men would be sure to produce complaints from the affected policyholders, who had every right to assume that insurance companies would carry out their contracts at the original premium rate. Legal proceedings might be initiated, and numerous policies cancelled.

Although the bill as introduced appears to permit the increasing of premium rates on existing policies, it permits it only "in order to comply with the nondiscrimination requirement of this Act." The threat of litigation over this condition might effectively prevent companies from trying to adjust the premium rates upward on their women insureds' policies.

If women's life insurance rates were not adjusted upward, then men's life insurance rates on existing policies would have to be adjusted downward to the level of women's rates. Since policies on men constitute over 80 percent of the individual life insurance business in force, such a large reduction in present and future premium income would substantially impair life insurer's financial strength and their ability to carry out their long-term obligations.

Thus far we have considered only the insurance company losses which would be incurred in the form of lower premium receipts. Added to those losses would be the increased administrative expense arising from the changes. Countless records would

have to be changed, and computer programs would have to be altered, to switch over to the new premium rates, cash and other nonforfeiture values, life income settlement factors and dividend scales. A changeover process of this complexity and magnitude would involve substantial time and costs. These costs would have to be passed on to the policyholders. The result would be to magnify the impact on women and men owning existing policies.

There is also a serious constitutional defect inherent in the retroactive features of S. 2204. This is discussed in Appendix IV.

IMPLICATIONS OF RECENT COURT PROCEEDINGS

Some of the reasons for the introduction of S. 2204 may be related to recent activity in the courts. There have been a few court opinions, including one decision by the United States Supreme Court, that have addressed questions about retirement plans that are related to the questions we are discussing today.

The Supreme Court decided, in *Manhart v. Los Angeles Department of Water and Power*, that women may not be required to contribute more than men to a plan from which they will receive the same monthly retirement benefits as men. Some lower court decisions have held that women may not receive smaller monthly retirement benefits than similarly situated men.

This issue is likely to reach the U.S. Supreme Court again as these cases proceed through the appellate process, since the *Manhart* decision did not explicitly answer all of the questions being raised. We think the Supreme Court in that case clearly recognized the validity of plans that do provide for retirement benefits determined by cost factors that take into account the different mortality of men and women.

The cases currently making their way through the courts include *Norris v. Arizona Governing Committee* in the Ninth U.S. Circuit, *Peters v. Wayne State University* in the Sixth Circuit, and *Spirt v. TIAA-CREF* in the Second Circuit. We have filed briefs amicus in the *Norris* and *Spirt* cases.

We believe that it is appropriate to allow a person's sex to be taken into account in determining the amount of a person's monthly retirement benefit resulting from given contributions, because the estimated cost factor is affected by that sex. This would accord with the principle to which we adhere in life insurance: insurance companies (or retirement plan sponsors) should be permitted to reflect in their insurance prices (or plan benefits) personal characteristics which are associated with differences in the expected costs of the insurance product (or plan benefit). Insurers (and plan sponsors) should, however, if they reflect a particular characteristic, do so in a fair, straightforward way.

We have, in other forums, discussed the retirement plan question in detail. Prohibiting the reflection of sex in either defined contribution plans or defined benefit plans would have complex, far-reaching consequences, including an estimated additional cost to retirement plan sponsors of up to \$2 billion per year. We oppose such a prohibition in either employee benefit plans, life insurance, or annuities.

CONCLUSION

In summary, we oppose S. 2204 as being in part unnecessary and in part undesirable. We will be glad to answer any questions you may have.

Appendix I

THE VALIDITY OF SEX AS A CLASSIFIER

Women live longer than men in virtually every part of the world, under a wide variety of economic and social conditions. Mortality rates are lower among women than men in most age groups in most countries. In the United States and all other economically advanced nations, women's mortality rates are lower in all age groups. Even before birth, more female fetuses than male fetuses survive.

Biological and hereditary research demonstrates that there is a substantial scientific explanation for the differences between female and male life expectancy. The existence of two X chromosomes in the females, as opposed to one in the males, results in the female being able to compensate for any wayward recessive genes in one of her X chromosomes, which the males' Y chromosome cannot do. Also, the much greater rate of production of prostaglandins in males than in females can explain the greater mortality and morbidity of males due to heart disease, stroke and the like.

Most significant for life insurance purposes is the fact that women's mortality is lower than men's in all age groups among persons insured for life insurance and

annuities. Among individuals insured in the standard class for individual life insurance, overall female mortality has consistently been very close to 60 percent of male mortality. That means that among the female insureds there have been only 60 percent as many deaths each year as would have occurred if they had died at the rates which have been observed among male insureds. It is important to note that these standard-class insureds are persons in whom the insurance companies did not find, at time of issue, characteristics such as poor health or hazardous occupation which made them relatively higher risks in the insurers' judgment. Accordingly, the 60 percent ratio is reasonably free of extraneous influences. Among annuitants under both individual and group annuity contracts the female mortality has been equivalent to that of males approximately five years younger.

The innateness of women's superior longevity is corroborated by a paper, "The Sex Differential in Mortality Rates: Demographic and Behavioral Factors," presented by Deborah L. Wingard in June, 1980 to the Society of Epidemiologic Research. Ms. Wingard addressed the question of how much influence risk factors such as physical health status (disabled or not disabled), smoking habits, physical activity, etc., have on the observed mortality differential by sex. By means of a mathematical analysis of sixteen known risk factors, she concluded that if women and men were subject to those various factors to the same degrees, the observed mortality differential between women and men would be even larger than it is. In other words, women's superior longevity could not be explained by those sixteen factors. The observed mortality differential is, of course, influenced by such factors.

It has been pointed out, correctly, that insurers did not differentiate life insurance premium rates by sex during a period of a few decades ending in the 1950's. The reasons why it was possible not to use sex differentials during those years were: (1) the mortality differential by sex was significantly smaller then than it is now; (2) premium rates were not differentiated by policy size in those years, and the smaller policies bought by women were costing the companies more administrative expense per \$1,000 of insurance, which offset the mortality advantage for women; and (3) fewer women bought life insurance then than now, and there was less justification, in terms of administrative cost, to have separate premium rates. The situation is quite different today with respect to all these factors. Companies have been able to establish a more refined rate structure which has been in effect for the last quarter century and has enabled women to pay appropriately lower premium rates for life insurance than men have paid.

Appendix II

OVERLAP THEORY

In the main body of our testimony we mentioned a line of argument which has become known as the overlap theory. This argument has been advanced by some proponents of legislation requiring unisex actuarial tables, such as Professor Barbara Bergmann. The argument begins by pointing out that it is possible to match approximately 83 percent of males and females as to the years of age in which they die; that is, if a group of 100,000 males, age 65, and a group of 100,000 females, age 65, were used as a test sample, when all of the members of the two groups had died, it would be found that approximately 83,000 of the females had died at the same ages as approximately 83,000 of the males. Thus, because 17 percent of the females live longer than a corresponding percentage of the males, it is supposedly unfair to penalize the other 83 percent of the females, who can be paired with males as to age at death, by charging females higher annuity premiums.

It should be noted at the outset that the Bergmann study arbitrarily selected the year of death as the basis for pairing males and females. This is no more appropriate than pairing by one of the many other possible methods, such as by order of death. Thus, if the first woman who dies is paired against the first man who dies, and this process of consecutive pairing is followed, by the end of the third year no male will be matched against a female who died at the same age. In fact, continuing this process to age 110 for males and age 115 for females leads to pairings over most of the period with the male age at death being five years lower than the age at death of the corresponding female.

The logical fallacy and economic irrelevance of the year of death pairing approach is obvious when this is viewed in terms of actual dollars. If a company (or a government) were to issue annuities of \$1,000 per year to each of 100,000 men and 100,000 women experiencing the mortality rates referred to in the Bergmann study, it would have to make payments of \$100,000,000 in the first year to each group. In the fifth year the payments to the male annuitants would have dropped to \$90,329,000,

while those to the female annuitants would amount to \$94,053,000, and in the tenth year annuity payments would have been \$73,657,000 to males, and \$83,328,000 to females. Over the course of fifty years, an aggregate of \$1.561 billion would have been paid to male annuitants and \$1.926 billion to females. The females, as a group, would have received \$365 million—23 percent—more than the males.

Looked at from another perspective, if benefits of \$1,000 per year were to be paid to each of 100,000 males beginning at age 65 from a fund earning 5 percent, after taxes and all expenses, such a fund would have to be \$1,040,000,000. The corresponding fund needed for female annuitants would amount to \$1,194,000,000.

Alternatively, a fund equal to that used to provide \$1,000 a month to male annuitants could provide \$870 per month to female annuitants. If female annuitants were to draw \$1,000 per month from this last fund rather than \$870 per month, it would be exhausted after 18 years. For those females surviving beyond that period and receiving no further payments, the overlap theory would provide cold comfort.

Professor Robert J. Myers, formerly Chief Actuary for the Social Security Administration for 23 years, and Professor Emeritus of Actuarial Science at Temple University criticized the overlap theory in a 1977 article in *Civil Rights Digest*, a publication of the U.S. Commission on Civil Rights.

He noted that, while the years of death of 84 percent of men and women coincide, the 16 percent of unmatched men would have an average age at death of approximately 70 years, and the average age at death of the unmatched women would be approximately 88. He then illustrated the absurdity of the overlap analysis by observing that if the years of death of members of a group of 1,000 men at age 65 are matched with the years of death of a group of men aged 60, there will be an overlap of approximately 85 percent. Thus, under that theory, it presumably would be improper or unfair to utilize mortality tables based on age in setting insurance premiums. Of course, the logical result of following this mode of analysis is to dispense with any actuarial analysis at all; a result which would be at odds with a voluntary private insurance business.

Appendix III

NAIC MODEL REGULATION TO ELIMINATE UNFAIR SEX DISCRIMINATION

(As Amended and Adopted by the NAIC)

Preamble: This model regulation responds to conditions within the insurance industry and among regulatory authorities which have allowed the development of unequal treatment of males and females and treatment which varies according to marital status in the sale of insurance. Reasonably exhaustive research has been conducted by several states in an effort to identify the nature of such unequal treatment. These studies have disclosed a pattern of activities which can conveniently be divided into two categories. The first relates to the availability of equal coverage and the second is the comparability of the rates charged for that coverage.

The primary area of difficulty arises in the health and disability lines of insurance where the morbidity tables which are currently in use and current company experience reflect a higher utilization of benefits by female insureds. As a result, many companies restrict the types and amounts of coverage which are available to females and charge rates for females which exceed male rates for identical coverage. Life insurance and annuity rates reflect lower mortality rates for females although the adequacy of the rate differentials are subject to question since general population mortality studies produce larger differences in male and female mortality than is generally assumed by either the life insurance industry or regulatory authorities in their development of reserves, cash values and premium rates. Many life insurance companies have also been found to apply restrictions to the availability of coverage to females which do not apply to males.

The automobile insurance business is characterized by a rating system which produces higher rates for males and unmarried individuals. Higher rates for these classes of insureds result from higher claim levels. Availability of automobile insurance with some companies is also affected by marital status. The premium rates charged for homeowner and property insurance do not vary by sex although a single or divorced female may encounter more difficulty in obtaining coverage than a male in similar circumstances.

Although discriminatory practices have been identified in both the premium rates and availability of insurance, an appropriate objective is to determine which of these practices constitute an unfair discrimination and to adopt regulations which prohibit those practices. Since there is apparently no segment of the public or the

insurance industry which is prepared to dispute the right of females to have equal access to insurance, it is desirable to adopt a regulation which enforces this standard of equality. This model regulation is designed to accomplish that purpose as it relates to contract language and underwriting practices.

On the other hand however, since the business of insurance is built upon the ability of the insurance company to evaluate risk and assign a price tag to that risk, any attempt to tamper with the pricing mechanism of the insurance business must be approached with great care. The subjects of premium rates and availability of coverage have been determined to be separate issues which can be dealt with more effectively if handled separately. As a result, the NAIC Task Force on Unfair Sex Discrimination has chosen to propose this model regulation for adoption as the first step in a two stage program. The second stage will involve the review of rating systems which are currently in use in an attempt to determine the validity of assumptions, statistics and actuarial methods which have been routinely accepted in the past.

Several states, including Pennsylvania, New York, New Jersey and Oregon, have adopted regulations similar to this model with little or no opposition. The major insurance industry trade associations have actually taken a public position of not opposing adoption of such regulations and many insurance companies are presently in the process of voluntarily removing all sex related restrictions in their contract language and underwriting rules. This model regulation, however, is necessary to assure that this standard is adhered to by the entire industry.

One subject which is a recurring topic of interest in the research which has been conducted is that of pregnancy related covering in health insurance contracts. Since normal pregnancy is not a sickness or injury as a result of an accident and can generally be planned or avoided, the NAIC Task Force has not subscribed to the theory that such coverage should be mandated in all health insurance contracts in the name of equal availability of coverage. Such action is beyond the scope of the authority of this regulation and if the subject is to be addressed, it should be included in the NAIC Health Insurance Minimum Standards Regulation. This model regulation does, however, contain language which may either be retained in this regulation or transferred to the Minimum Standards Regulation, whichever is most convenient in a particular jurisdiction. That language relates to mandatory coverage of pregnancy complications and the restriction of coverage for the genital organs of one sex only. Restrictions on these areas of coverage have been deemed to be tantamount to unfair sex discrimination since they apply to sickness or injury which affects only one sex.

This regulation may appropriately be promulgated pursuant to the authority of the Insurance Trade Practices Act either under the unfair discrimination section or as a regulation identifying a previously undefined unfair trade practice.

1. *Purpose:* The purpose of this regulation is to eliminate the act of denying benefits or coverage on the basis of sex or marital status in the terms and conditions of insurance contracts and in the underwriting criteria of insurance carriers.

2. *Authority:* This regulation is issued pursuant to (variable authority of each state—promulgation of this regulation under the State's Unfair Trade Practices Act is considered to be the most viable source of authority).

3. *Definition:* Contracts—any insurance policy, plan, or binder, including any rider or endorsement thereto offered by an insurer.

Insurer—any insurance company, association, reciprocal or inter-insurance exchange, nonprofit hospital plan, nonprofit professional health service plan, health maintenance organization, fraternal benefit society or beneficial association.

4. *Applicability and scope:* This regulation shall apply to all contracts delivered or issued for delivery in this state by an insurer on or after the effective date of this regulation and to all existing group contracts which are amended on or after the effective date of this regulation.

5. *Effective date:* This regulation shall be effective on (insert the date of adoption or promulgation).

6. *Availability requirements:* Availability of any insurance contract shall not be denied to an insured or prospective insured on the basis of sex or marital status of the insured or prospective insured. The amount of benefits payable, or any term, conditions or type of coverage shall not be restricted, modified, excluded, or reduced on the basis of the sex or marital status of the insured or prospective insured except to the extent the amount of benefits, term, conditions or type of coverage vary as a result of the application of rate differentials permitted under the (insert name of state) Insurance Code. However, nothing in this regulation shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible

for dependents benefits.¹ Specific examples of practices prohibited by this regulation include but are not limited to the following:

- a. Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.
- b. Denying policy riders to females when the riders are available to males.
- c. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.
- d. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.
- e. Denying disability income benefits to employed women when coverage is offered to men similarly employed.
- f. Treating complications of pregnancy differently from any other illness or sickness under the contract.
- g. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.
- h. Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.
- i. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.
- j. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.
- k. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

Note: Although the above examples are oriented toward unfairly discriminatory practices in the accident and sickness disability incomes and life insurance lines, this model regulation is appropriate for use in prohibiting the use of sex or marital status as the sole base either to deny coverage or to offer differential coverage in all lines of insurance.

Appendix IV

Aside from actuarial and other considerations, S. 2204 raises a serious constitutional question.

Article 1, Section 10 of the U.S. Constitution denies to the states the power to pass any "law impairing the obligation of contracts." This prohibition has been found to apply equally to the Congress through operation of the due process clause contained in the 5th Amendment to the Constitution. See *Kogan v. Schulte*, 61 F. Supp. 604 (1945); *Continental Illinois Nat'l Bank v. Chicago, Rock Island & Pacific Ry. Co.*, 294 U.S. 648 (1934); *Union Pacific Ry. Co. v. U.S.*, 99 U.S. 700 (1878); *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1.

The power of the Government to promote the general welfare or some important social purpose has sometimes been determined to be more important than individual contract rights. The factors which support the exercise of this power, such as emergencies or where contract rights are impaired collaterally or incidentally to the enactment of a statute, are not present here, however.

The United States Supreme Court gave a clear reaffirmation of the original intent of the "impairment of contracts clause" recently in *Allied Structural Steel Company v. Spannaus* (438 U.S. 234; 98 S. Ct. 2716) (1978). A state statute changing the state's pension law was held to be void because it nullified the express terms of preexisting pension contract obligations and imposed a completely unexpected liability on the plaintiff corporation (the plan contributor for its employees) in potentially disabling amounts, without any showing that such a severe disruption of contract obligations was necessary to meet an important social purpose.

The holding in *Allied* and other cited cases gives strong reason to believe that S. 2204 is fatally flawed because it disrupts millions of insurance contracts currently in force without demonstrating that such disruption itself would cure any social ill.

The CHAIRMAN. Thank you very much.

Dr. Bergmann.

Dr. BERGMANN. Senator Packwood, I am here representing the American Association of University Professors, an organization of

¹ Sentence as amended by the (C1) Subcommittee.

75,000 college and university teachers whose membership is 73 percent male. The association has consistently embraced the principle of equal and fair treatment of both sexes, and is very concerned in this matter. Our major concern is with pensions. The behavior of some of the industry's firms with respect to pensions provides an excellent illustration of the need for reform.

The leading firm providing pensions for college teachers, namely, the Teachers Insurance Annuity Association, has refused to provide a form of its most popular and most feasible pension system which meets the plain standard set down by the Supreme Court in the *Manhart* decision. It has thus denied to schools which want to get out from under a plainly implied liability the opportunity to do so.

This firm, TIAA-CREF, insists on maintaining as the only feasible plan for most schools one which pays an old woman substantially less than a similarly situated old man. One of the previous witnesses, Ms. Ross, spoke of old people in the supermarket. I think that is a very good image for the Congress to keep in mind as it considers this matter.

We have an old woman and an old man in the supermarket, and she cannot put that extra chicken into her basket. At home, she cannot make a telephone call to one of her children or perhaps to a sister or a brother that a man can make with a similar earnings history. It is this kind of situation which we are asking remedy for.

This same company which says it will not and cannot arrange a system whereby old men and old women with similar earnings records can have equal periodic benefits says it does this because women on average live longer than men. Yet this same firm has been involved in selling college administrations life insurance plans for faculties which give the same life insurance benefits for men and women, thus conveniently ignoring the difference in life expectancy when it advantages males.

This kind of behavior blows away the pretention that present practice is a science, and reveals that it is really a religion.

Mr. Bernstein said that—or implied, and some of the other insurance representatives implied that all that goes on now is rational and businesslike. Yet they also testify that when a woman gets married, her own driving potential means almost nothing. For insurance purposes she goes in with her husband. If she marries an 18-year-old man, she gets charged a fortune for her own insurance, and if she marries a 35-year-old man, she gets charged a lot less. Well, her driving does not mysteriously change.

This shows that we have a system which is somewhat capricious now, which is old fashioned, which takes account of tradition, traditions which are going by the board, and which Congress should assist the insurance industry in ending.

Now, we have also heard about cost estimates. Again, Mr. Bernstein in particular and some of the other people have threatened the Congress with huge costs, millions and millions of dollars in costs, which perhaps will bankrupt whole States and municipalities. I think that these are merely scare estimates. Obviously, in the pension matter there will be reapportionment of a pool of money, and some of the pool which would not have gone to women in the past will go to them, but there are adequate reserves in all

of these systems to take care of these matters without any problems.

Many executives of the insurance industry do not believe it is fair to treat women and men the same for insurance purposes. These executives are entitled to their opinion of fairness. However, these private opinions should not be permitted to control national policy in insurance matters.

I would urge, that the pension issues are more important than the other issues. The young drivers are paid for by and large by their parents, but the older citizens have no one else to pay for them. It is there that equality is particularly important. It is what we do there that will allow that old woman in the supermarket to be able to fill her basket to the same extent as an old man with the same earnings record.

Thank you.

[The statement follows:]

STATEMENT OF DR. BARBARA R. BERGMANN ON BEHALF OF THE AMERICAN
ASSOCIATION OF UNIVERSITY PROFESSORS

My name is Barbara R. Bergmann. I hold a Ph.D. degree in economic, and am Professor of Economic at the University of Maryland. For the last ten years, I have been researching and writing on the issues raised by the insurance industry's differing treatment of men and women. I am here today representing the American Association of University Professors, of whose Council I am a member. AAUP is an organization of 75,000 college and university teachers, whose membership is 73 percent male. The Association has consistently embraced a policy of equal and fair treatment of both sexes.

AAUP is concerned with the effect on its members of insurance industry practices which treat men and women differently. Our primary interest is in the area of pension administration, as provided by firms in the industry, but we also are concerned about life insurance and disability insurance. We believe that reform of industry practices concerning differential treatment of men and women is needed.

Firms making up the insurance industry have consistently taken advantage of the weak position of women in the American economy to discriminate against them, both as customers of the industry and as employees. The industry has been very slow to change, and needs the prod of national legislation.

The behavior of some of the industry's firms with respect to pensions provides an excellent illustration of the need for reform. The leading firm providing pensions for college teachers—Teachers Insurance and Annuity Association (TIAA-CREF) has refused to provide a form of its most popular defined contribution pension plan which would give men and women with equal contributions to their pension funds equality in monthly benefits when they come to retire. It has thus denied to those schools which would like to comply with the plain mandate of the Supreme Court in the *Manhart* case a feasible way of doing so.

TIAA-CREF insists on maintaining as the only feasible plan for most schools one which pays an old woman substantially less than a similarly situated old man. It says it does this "because" women on average have longer lives than men. Yet this same firm has been involved in selling college administrators life insurance plans for faculty which give the same life insurance benefits to men and women, thus conveniently ignoring the difference in life expectancy when it advantage males.

It is abuses of this sort which require reform, and at the federal level. It would be naive to assume that this problem can be solved on the state level.

Would a reform measure which eliminated the insurance industry's ability to treat women and men differently make economic sense? Would it weaken a vital industry, and put undue costs and risks on the firms and their policyholders? The answer to that question is "No."

The insurance industry operates by pooling risks. Actuarial principles require that for any pool of covered persons the premiums paid to the company must cover the liabilities the company will face to the people in the pool. Requiring the insurance companies to place men and women in the same pool, rather than allowing segregated pools, will not interfere with the insurance industry's adherence to good

actuarial practice. However they pool their risks, they will have the ability to cover their liabilities by setting premium charges.

Many executives of the insurance industry do not believe it is "fair" to treat women and men the same for insurance purposes. Those executives are entitled to their opinion of fairness. However, these private opinions should not be permitted to continue to control national policy in insurance matters. Questions of fairness should not be left to private business, if there is a history of discrimination, as there is in this case.

AAUP backs the idea of legislation to curb insurance practices which distinguish between men and women, practices which continue to be vehicles for heaping disadvantage on women. We would consider legislation of this type beneficial and overdue.

The CHAIRMAN. Thank you.

Mr. Freeman.

Mr. FREEMAN. Good morning, Mr. Chairman.

The CHAIRMAN. Good morning.

Mr. FREEMAN. My name is Robert T. Freeman, Jr. I am president and chairman of the board of Consumers United Insurance Co., here in Washington, D.C. My company is a group life and group accident and health company and is part of the Consumers United Group. The Consumers United Group is a group of companies owned by its employees.

I first entered the insurance business in 1945 with the United Mutual Life Insurance Co., and in 1956 I went to Africa and I founded four insurance companies, both life and nonlife companies, all of which are prosperous companies today. I have been an insurance adviser to the Government of Ethiopia for 3 years implementing insurance laws. I have been an insurance adviser to the Governments of Lesotho, Guyana, Zambia, the International Finance Corp., the Economic Commission for Africa, and others.

I am very pleased to be able to testify this morning in support of S. 2204, a bill prohibiting discrimination in insurance. I think it is very important that we all understand at the outset that we are talking about a civil rights issue here today. We are talking about establishing insurance rates based on sex, and that practice is discriminatory and wrong, just as wrong as it would be if insurance companies were basing rates on religion, national origin or race. Indeed, it has not been that many years since insurance companies did base their rates on race. White Americans were charged one amount and Negro Americans were charged a much higher amount.

Let me make the point another way. In the coming days as you hear the arguments of those who favor gender-based insurance rates, give yourself this test. Every time you hear gender, substitute race. Every time you hear an argument for one rate for men and another rate for women, substitute one rate for white Americans and another for black Americans. Every time you hear reasons why women should be charged more, substitute foreign-born Americans for women.

In short, substitute any other group of Americans whenever you hear men or women, and see how distasteful and discriminatory this policy actually is. I think you will find discrimination by gender as reprehensible as I found rate discrimination by race when I first encountered it in insurance nearly 40 years ago. I support the nondiscrimination of sexes in insurance for the same reasons I support nondiscrimination by race in insurance.

Mr. Chairman, I have reviewed the statements before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Commerce on H.R. 100, a bill to prohibit discrimination in insurance. Herein lies the problem. Our Nation with all of its technological superiority has produced statistical information on every and any subject which needs to be analyzed and provides ammunition for both sides of any argument regardless of the subject.

Today I am not submitting any statistical support for my statement to this committee that I am in full accord and sympathy with the S. 2204 bill to promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts. I could give statistics to bolster my argument, but the question is not one of data, it is one of dignity. It is not a debate over equations. It is one, rather, of equality.

It is, in short, Mr. Chairman, an issue which must be resolved on moral, philosophical and ethical grounds, not on actuarial tables. All American citizens should be treated equally. We should have one experience table showing the overall experience of all Americans and not one for black, not one for women, one for different ethnic groups, and so forth.

Our premium rates should be based on all American experience tables, for life, accident, health, and other insurance. The deviation from the standard premium rates should be based on sound underwriting practices. That would take into account such factors as life and health styles, occupation and other personal choices that directly affect mortality and morbidity tables.

Statistics kept on mortality experience for black females and white females show that black females do not live as long as white females, however, the insurance industry does not charge different rates for life insurance or annuities on this basis, because if it did so, it would be accused of discrimination by race. Why, then, cannot the same principle and reasoning be applied to sex discrimination?

I spoke earlier of my experience of establishing domestic insurance companies in Africa which transacted all classes of insurance. There was absolutely no discrimination in premium rates because of sex, religion, national origin, or race, and all of these companies are large and prosperous insurance companies today.

I ask why should we in the United States be different? S. 2204 if enacted as the Fair Insurance Practices Act will indeed be fair to all of those people who have been discriminated against in the past and will eliminate these unfair practices in the future.

I thank you for giving me the opportunity to speak out before this committee.

[The statement follows:]

STATEMENT OF ROBERT T. FREEMAN, JR., PRESIDENT, CONSUMERS UNITED INSURANCE Co.

My name is Robert T. Freeman, Jr. and I am President and Chairman of the Board of the Consumers United Insurance Company here in Washington, D.C. My Company is a group life and group accident and health company and is a part of the Consumers United Group. The Consumers United Group is a group of companies owned by its employees.

I first entered the insurance business in 1945 with the United Mutual Life Insurance Company of New York and stayed with this company for 10 years as Vice President and Actuary. In 1956, I went to what was then the Gold Coast in West Africa which gained its independence as Ghana in March, 1957, and founded the first domestic life insurance company. In 1959, I founded the first domestic property and casualty company. In 1960, The Western Region Finance Corp of Nigeria asked us to establish, in partnership with them, an all purpose insurance company in Lagos. In 1962, I was appointed the first Managing Director, of the State Insurance Company, by the President of Ghana.

I was the Insurance Advisor to the Government of Ethiopia for three years implementing an insurance law and establishing an insurance department regulating the industry. I have been an Insurance Advisor to the Governments of Lesotho, Guyana, Zambia, The International Finance Corporation, The Economic Commission for Africa and others.

I am pleased to be able to testify this morning in support of S. 2204, a bill prohibiting discrimination in insurance.

I think it is very important that we all understand at the outset that we are talking about a civil rights issue here today. We are talking about a practice of establishing insurance rates based on a person's sex. And that practice is discriminatory and wrong. Just as wrong as it would be if insurance companies were basing rates on religion, national origin or race.

Indeed, it hasn't been all that many years since insurance companies did base their rates on race. White Americans were charged one amount for life and health insurance. Negro Americans were charged a much higher amount.

The white insurance companies argued that the practice wasn't discriminatory. That it simply reflected the actuarial realities of the time. Ironically, insurance companies today are making essentially the same argument in support of their discriminatory practice of using gender as a basis for the cost of insurance.

I'm sure no one in this room would agree that basing insurance rates on race, religion or national origin would be tolerable. Yet, some Americans are willing to allow the practice to continue when the basis is on gender. When the victims of the practice are the women—and, to be sure, the men—who are singled out to pay more for insurance because of their sex.

Let me make the point in another way. In the coming days, as you hear the arguments of those who favor gender based insurance rates, give yourselves this test. Every time you hear gender, substitute "race." Every time you hear an argument for one rate for men and another rate for women, substitute one rate for White Americans and another rate for Black Americans. Every time you hear reasons why women should be charged more, substitute "foreign-born Americans" for "women." In short, substitute any other group of Americans whenever you hear men or women and see how distasteful and discriminatory this policy actually is. I think you will find discrimination by gender as reprehensible as I found rate discrimination by race when I first encountered it in insurance nearly 40 years ago.

My first experience with this type of discrimination was through a reinsurance agreement United Mutual Life had with a large U.S. Reinsurance Company. Under the agreement, the large company provided the coverage for many of the men and women who had purchased our United Mutual policies. This practice of reinsurance was—and is—a standard method of operation in the insurance industry.

However, I soon discovered that the reinsurer was charging higher rates for Negroes than for Whites. To confirm my suspicion, I found a young White male and a young Negro male of the same age, occupation and living standards and insured both of them with the company. However, when the reinsurance rates came back, the rates were almost twice as high for the Negro life as for the White.

I contacted the actuary of the reinsurer and arranged to meet to discuss the reasons for the difference in rates. I received the "stock" explanation that "everyone knows that Whites live longer than Negroes." "The mortality tables which we developed and kept for Negro lives prove this" the actuary told me.

My response that I could find 20 million White lives in the U.S. with higher mortality than 20 million Negro lives didn't convince the actuary to change the discriminatory policy.

So, I reported the case to the New York State Insurance Department who then instructed the Reinsurance Company to give us standard rates for all of our insureds no matter what the race.

I support the non-discrimination of sexes in insurance for the same reasons I supported non-discrimination by race in insurance.

Mr. Chairman, I have reviewed the statements before the Subcommittee on Consumer Protection and Finance of the Committee on Interstate and Foreign Com-

merce, House of Representatives on H.R. 100, a bill to prohibit discrimination in insurance on the basis of race, color, religion, sex or national origin and took great interest in the volume of statistics presented to support the various arguments both pro and con on H.R. 100.

Mr. Chairman, herein lies the problem. Our nation with all of its technological superiority has produced statistical information on every and any subject which needs to be analyzed and provides ammunition for both sides of any argument, regardless of the subject.

Today, I am not presenting any statistical support for my statement to this Committee, that I am in full accord and sympathy with the S. 2204 bill to promote interstate commerce by prohibiting discrimination in the writing and selling of insurance contracts, and I could give statistics to bolster my arguments, but the question is not one of data, it is one of dignity. It is not a debate over equations, but rather a question of equality. It is in short, Mr. Chairman, an issue that must be resolved on moral, philosophical and ethical grounds, not on actuarial tables.

All American citizens should be treated equally. We should have one experience table showing the overall experience of all Americans and not, one for Blacks, one for women, one for different ethnic groups, etc. Our premium rates should be based on "All American experience tables," for life, accident, health and other insurance. The deviations from these standard premium rates should be based on sound underwriting practices. That would take into account such factors as life and health styles, occupation and other personal choices that directly affect mortality and morbidity.

The statistics kept on mortality experience for Black females and White females show that Black females do not live as long as White females, however, the insurance industry does not charge different rates for life insurance or annuities on this basis, because it would be discriminatory practice because of race. Why then, cannot the same principle and reasoning be applied to sex discrimination.

I spoke earlier of my experience of establishing domestic insurance companies in Africa which transacted all classes of insurance. There was absolutely no discrimination in premium rates because of sex, religion, national origin or race, and all of these companies have grown to be large and profitable companies. Why should we, in the United States be different?

S. 2204 if enacted as the "Fair Insurance Practices Act" will indeed be fair to all of those people who have been discriminated against in the past and will eliminate these unfair practices in the future.

Thank you for permitting me to speak out before this Committee this morning.

The CHAIRMAN. Let me ask you one question before we move on to the next witness. Do life insurance companies currently discriminate on the basis of race for policies for white men versus black men?

Mr. FREEMAN. Not that I know of today.

The CHAIRMAN. Ms. Sher.

Ms. SHER. Good afternoon, Mr. Chairman. I am Jo Ann Sher; I am testifying on behalf of the Health Insurance Association of America.

The Health Insurance Association of America is the membership trade association of the health insurance business in the United States. Its 340 members write over 80 percent of the health insurance written by insurance companies in the United States. HIAA has represented the interests of its member companies before Congress on the issue of the relationship of sex discrimination to insurance risk classification on several previous occasions.

S. 2204, entitled the Fair Insurance Practices Act, prohibits the use of information classifying individuals for insurance purposes on the basis of race, color, religion, sex, or national origin. In effect, the bill would render unlawful the health insurer's use of one of the most reliable factors used to rate their risks, sex.

HIAA has stated on previous occasions before other committees of Congress and states here again today that it opposes legislation

such as S. 2204 which would eliminate health insurers' ability to use any of the more important risk factors, including sex.

At the outset, we would like to say that what is "fair" in insurance practices has many aspects—social, political, and business. In our formal submission and here again today we wish to address only the business aspect. Simply put, classification is the cornerstone of the insurance industry. We cannot do our business without classification, and sex is an important element in the classification system.

Our comments address themselves solely to sex as a classification because health insurers do not differentiate premium rates on the basis of race, religion, color, or national origin. To do so is contrary not only to current public policy but to sound actuarial principles as well.

Three elements characterize the use of sex by health insurers. One, there is a clear business necessity and rational basis for a separate classification based on sex. Two, the use of sex as a classification is not based on any expressed, implied, or covert intention to unfairly discriminate in today's pejorative sense of the word. Three, the use of sex within the structure of the rating system reflects nothing more than the industry's business objective: To charge each individual a rate which reflects as accurately as possible the risk of loss such individual presents to the insurer.

We are also not addressing today the areas of availability of coverage, terms, benefits or requirements of coverage, or marketing because the vast majority of health insurers do not differentiate in these areas on the basis of sex. I refer you to exhibits A and B of our formal submission for more information on this point.

The insurer's use of any risk factor is based on the need for relevant cost-related data to arrive at the fairest possible rate for a given individual. Rate differences between men and women reflect different claim and cost experience, period. To suggest that they reflect a sinister intention is neither the case nor does it make good business sense. The simple fact of business life faced by health insurers today is that health insurance costs are affected by external factors over which insurers have little or no control and which have become increasingly volatile and unpredictable.

We cite several examples in our formal submission. The volatility has especially impacted small insurers writing individual health insurance. Consequently, the need to be able to use proven, reliable risk factors like sex in such an unstable environment is of great importance for determining a fair price while ensuring the solvency of especially smaller companies.

Proponents of the elimination of sex as a classification factor strongly suggest that insurers must be prohibited from differentiating rates based solely on sex. This is simply not true. The fact is there are many other factors used to evaluate and classify health insurance risks. While the application of factors differs with the type and form of the coverage, the list I am about to enumerate applies to health insurance in general.

To begin with, the health history of the individual is logically a significant factor in evaluating health insurance risks. Occupation is used by health insurers. Residence of the insured is used by health insurers because of the widely varying health costs in the

country. Lifestyle is another area of risk classification. Use of tobacco, alcohol have also been shown to affect morbidity. The age of the insured has been shown to be a direct quantifiable risk factor, and like age, the business experience of our member companies as reflected in their data shows that sex is a direct and quantifiable risk factor, too.

Proponents of unisex rates contend that even if there were differences in experience by sex at one point, those differences are eroding and thus should be legislatively prohibited. The logic of this has always escaped me. However, the experience compiled by companies to date demonstrates a continuing differential between health claims, and as data collection techniques have improved in the recent past, this continuing differential persists.

Industry statements on sex discrimination have been construed to be absolutist and to preclude any change. Again, this is simply not the case. The health insurance industry has found that in order to survive, it must change; so it is also with insurer use of risk classification. As more and better data are compiled in all risk factors and as new ones are found, the business can make more informed—

The CHAIRMAN. I am going to have to ask you to summarize. I have read your statements and I want to be able to ask questions, and your entire statement will be in the record.

Ms. SHER. I think a key question is what would happen in terms of costs if health rates had to be unisex. For coverages for large groups, group coverages, there probably would be no cost impact in the long run since the effect of experience rating, which is the system that is now used for large groups, is essentially the same as the effect of unisex rating.

Where we run into the problem is in the case of individual health insurance and in some very small groups. There the delicate pricing mechanism will be upset in a way that warrants the attention of the sponsors of this bill. Women apparently believe that S. 2204 will result in lower health insurance costs for them. The rate charged to them will initially be a bargain for some for the women and will be an overcharge for others, the men. As in any marketplace, those for whom the price is a bargain, who, incidentally, represent the worst risks, will flock to buy. Some of those for whom the single rate is an overcharge—

The CHAIRMAN. I have to ask you to stop. I tried to make it clear to everyone our time limits. You do not need to read me the statement which I have read.

Ms. SHER. I am sorry if this is duplicative. We might simply leave you with the thought that it was not our intention today to discuss the social aspect. We have left that to others. But we would want to say in closing that if it is also deemed socially desirable for the private health insurance industry to continue to bear the responsibility for protecting the vast majority of Americans, we strongly urge the committee to look carefully at the ramifications of S. 2204 before leaping.

Thank you very much.

[The statement follows:]

STATEMENT OF JO ANN SHER, VICE PRESIDENT, CORPORATE LEGAL DEPARTMENT, TEACHERS INSURANCE AND ANNUITY ASSOCIATION OF AMERICA, COLLEGE RETIREMENT EQUITIES FUND, AND JOHN T. SNORE, VICE PRESIDENT, UNDERWRITING, PRUDENTIAL INSURANCE CO. ON BEHALF OF HEALTH INSURANCE ASSOCIATION OF AMERICA

The Health Insurance Association of America (HIAA) is the membership trade association of the health insurance business in the United States. Its 340 members write over 80 percent of the health insurance written by insurance companies in the United States. HIAA has represented the interests of its member companies before Congress on the issue of the relationship of sex discrimination to insurance risk classification on several previous occasions.

Jo Ann Sher is Vice-President, Corporate Legal Department, of Teachers Insurance and Annuity Association—College Retirement Equities Fund.

John Snore is Vice President for Underwriting for the Prudential Insurance Company of America. Mr. Snore is immediate past president of the Home Office Life Underwriters Association and current chairman of the HIAA Risk Classification Subcommittee.

With Ms. Sher and Mr. Snore is Peter M. Thexton, Actuary of the HIAA. He is an officer of The Health Insurance Section of The Society of Actuaries.

S. 2204 prohibits the use of information classifying individuals for insurance on the basis of race, color, religion, sex and national origin. In effect, the bill eliminates the traditional data base used by insurers to rate risks on the basis of sex.

As we have stated on previous occasions before other committees of Congress, HIAA strongly opposes legislation such as S. 2204 which would eliminate any of the more important risk classification factors such as sex. It is one of the most reliable factors in use by health insurers today.

We would like to set the record straight. We do not differentiate in premium rates on the basis of race, color, religion or national origin. To do so would be contrary to public policy and contrary to sound actuarial principles.

In our statement, we want to emphasize three elements which characterize the use of sex classification in health insurance. First, there is a clear business necessity and rational basis for the use of sex classification in a health insurance system. Second, the use of sex as a classification factor is not predicated upon any express, implied or covert intent to unfairly discriminate. Third, and most important, the use of sex within the structure of an insurance rating system is based upon the industry's objective to charge to each individual who chooses to be insured by a company a rate which is the most accurate reflection of that person's risks of loss presented to the insurer—in other words, the fairest rate possible.

Currently, the vast majority of insurers do not discriminate by sex in the areas of availability of coverage, the terms, conditions, benefits or requirements of the coverage, and in marketing the coverage. This is based not only on industry policy which was adopted in 1974 by HIAA (Exhibit A)¹ but also because of the model regulation adopted by NAIC in 1975. (Exhibit B). The model regulation is quite specific in its treatment of the activities of health insurers.

Eleven specific examples of practices which are prohibited by the model regulation are set forth in Section 6A. These examples are oriented toward unfairly discriminatory practices in the accident and sickness and life insurance lines. By providing that the list of prohibited practices is non-exclusive, the NAIC sought to make absolutely certain that sex could not be a basis for the denial of benefits or coverage. Prohibited practices include:

- a. Denying coverage to females gainfully employed at home, employed part-time or employed by relatives when coverage is offered to males similarly employed.
- b. Denying policy riders to females when the riders are available to males.
- c. Denying maternity benefits to insureds or prospective insureds purchasing an individual contract when comparable family coverage contracts offer maternity benefits.
- d. Denying, under group contracts, dependent coverage to husbands of female employees, when dependent coverage is available to wives of male employees.
- e. Denying disability income contracts to employed women when coverage is offered to men similarly employed.
- f. Treating complications of pregnancy differently from any other illness or sickness under the contract.
- g. Restricting, reducing, modifying, or excluding benefits relating to coverage involving the genital organs of only one sex.

¹ The exhibits referred to in this statement have been retained in the committee files.

h. Offering lower maximum monthly benefits to women than to men who are in the same classification under a disability income contract.

i. Offering more restrictive benefit periods and more restrictive definitions of disability to women than to men in the same classifications under a disability income contract.

j. Establishing different conditions by sex under which the policyholder may exercise benefit options contained in the contract.

k. Limiting the amount of coverage an insured or prospective insured may purchase based upon the insured's or prospective insured's marital status unless such limitation is for the purpose of defining persons eligible for dependents benefits.

Not only has this model been adopted in substance in 21 states, it is clear that observance of the HIAA policy statement and the model is now a nationwide practice among health insurers.

The reasons for the policy statement and for the affirmative support of the model regulation corresponded to the emerging market demand by women for health insurance and the concomitant interest shown by state regulators in eliminating unfair sex discrimination. It is only in the rating area and only with respect to sex that proponents of S. 2204 and the health insurance industry have serious disagreement. In fact, we believe that Section 4A of the bill is unnecessary. The regulation does not prohibit sex differentials in rating because both industry and regulators believed, and continue to believe, that the basis for such differentials is justified.

During this discussion of the necessity for insurers to use sex as a factor in risk classification, a vital point may be overlooked. The use of sex as a risk factor is not based on any intent to discriminate by sex. Insurers want to sell insurance to everyone at a fair price. It is not logical to have discriminatory intent while aggressively pursuing all segments of the insurance market. The use of any risk factor is based on the need for relevant cost related data to arrive at the most fair rate for an individual. The rating differences between men and women reflect only different claim and cost experience, not any *a priori* assumptions that favor one sex over another or that reflect discriminatory marketing strategy. Once this hurdle has been cleared, it is easier to explain the industry's use of sex-related data in a way that does not convey the aura of unfair discrimination.

Proponents of this legislation have criticized the business for ignoring other risk factors and relying solely upon the sex of the insured in making risk classification decisions. This is simply not the case.

There are many other factors used to evaluate and classify health insurance risks, that is, to determine the relative position of the individual within a risk classification system. While the application of these factors differ with the kind and form of coverage, our description applies to health insurance in general.

(a) The health history of the individual is, logically, a significant factor in evaluating health insurance risks. Applicants are asked to respond yes or no to several questions about health condition and prior treatment. These questions are geared to elicit responses about conditions that will indicate to insurers the relative insurability of the applicant. In some cases, additional investigation such as medical exams may be required for appropriate risk classification decisions.

(b) Occupation is used by health insurers to classify risks. Studies have shown that there is a correlation between the incidence and duration of disability and occupation.

(c) Residence of the insured is used by health insurers because of widely varying health care costs in the country. For instance, two individuals purchasing the same individual major medical policy and who have risk factors which are alike in all other respects will pay different rates if one lives in Oregon and the other lives in southern California.

(d) Lifestyle is another area of risk classification. Dangerous avocations, use of narcotics, alcohol, and tobacco, have been shown to affect morbidity. Many insurers are working with group policyholders on health improvement and disease prevention programs which they hope will compile data on such programs for refinement of future classification systems and at the same time lower the group's loss experience.

(e) The age of the insured has been found to be a direct and quantifiable risk classification factor.

(f) Like age, sex has also been found to be a direct and quantifiable risk classification factor.

We do not attempt in this statement to explain the genetic or biological justifications for the relationship of sex to insurance risk.

sex is an important risk classification factor in setting accurate and equitable rates among individuals who choose to be insured by the private insurance system.

Exhibit C is a copy of the most recent intercompany experience tables, shown in the 1979 and 1980 Reports Numbers of the Transactions of the Society of Actuaries. They are part of a long series of reports updated every one to three years. The experience is shown separately for males and females in most cases, and where it is not separated, there is a tabular adjustment for the percentage female. The female experience is always different from the male experience. Female health insurance claims tend to be higher than male claims, excluding maternity, except at the oldest ages and for small volume plans. Group and individual experience have the same pattern by age and sex, only the quantities are different. The patterns of claims by age and sex have not changed for the ten or more years over which these Reports have been published.

Exhibit D is the report of the study of disability insurance experience by sex prepared in 1976 by the New York State Department of Insurance. This study was prepared in response to accusations of the invalidity of then existing rate differentials by sex in disability insurance. The study concluded that sex is a major factor affecting the cost of disability income insurance and resulted in a regulation which effectively required rate differentials by sex for disability and medical care insurance in New York State, New York Regulation 62, Section 52.41(d).

Exhibit E is the HIAA'S April 1979 submission to the National Association of Insurance Commissioners' Accident and Health Subcommittee Task Force on Sex Discrimination in Insurance. This study reviewed other sources of data than the reports of the Society of Actuaries and the New York Department of Insurance. It concluded that the magnitude of the differences between male and female claim costs is sufficiently large that unisex rates would be unfairly discriminatory against the less favored classes, younger males and older females.

These tables and studies are important parts of the essential risk classification data base for private health insurance companies. The data are used to make critical decisions about the risk of loss presented to the insurer by the individual and the resulting price of health insurance for that individual. To say that sex classification is proper and necessary to the business is not to overstate the case at all.

The simple fact of business life faced by health insurers today is that health insurance costs are affected by external factors over which insurers have little or no control, and which have become increasingly volatile and unpredictable. (See HIAA Research and Statistical Bulletin No. 3-82, June 22, 1982, attached to this statement as Exhibit F.) For example, the health insurer is exposed to 17 percent annual inflation in the health delivery system (the health care component of the Consumer Price Index was 17 percent in 1981); costly innovations in health technology and delivery of services; recognition of allied practitioners and non-traditional treatments; underpayments by the federal and state governments for hospital care of the elderly and indigent, which is shifted only to insurance company—insured patients and self-pay patients; state laws mandating coverage of certain conditions and treatment which are actuarially unsound. For all these reasons it is inappropriate for Congress to prohibit health insurers to use these few remaining reliable factors.

Questions have been raised concerning the continuing justification for sex-distinct rates in health insurance. Proponents of unisex rates contend that even if there were differences in experience by sex at one point, those differences are eroding and thus ought to be legislatively prohibited.

The facts refute this inaccurate view held by our critics. The experience compiled by companies to date demonstrates a continuing differential between men and women in health claims. As data collection techniques have improved in the recent past, this continuing differential persists.

State regulators have studied the issue of the justification of sex distinct rates in life and health insurance and have reached similar conclusions. The NAIC's Actuarial Advisory Group to the Life and Health Committees is composed of actuaries from several state insurance departments. In response to a request from those committees in 1979, the group analyzed professional and industry data to determine the utility of and need for sex-distinct rating. Its conclusion, as adopted by the full NAIC, is as follows:

We recommend that the NAIC endorse the use of a risk classification system which appropriately reflects cost differences by sex for individually marketed insurance, and both cost differences and distribution by sex within a group for group insurance, as being in the best interests of buyers of insurance.

Exhibit G contains a description of the group's study. The report also states that "... the fact that the amounts of cost differentials based on sex continue to change

means that investigation must continue and trends must be followed up so that we can properly respond to emerging experience."

We should note that in adopting this statement, NAIC was careful to point out that their conclusion was a technical and not a political one. HIAA supported the conclusion in its technical form because it explains in a detached manner what we as an industry have continued to assert: the business of health insurance is one of risk classification, and, to maintain a sound private insurance system, sex as a risk classification factor is both necessary and desirable.

Industry statements on sex discrimination have been construed to be absolutist and to preclude any change. This is not the case, because the health insurance industry has found that in order to survive it must change. So it is also with insurer use of risk classification. As more and better data are compiled in all risk factors and as new ones are found, the business can make more informed underwriting and rating decisions about insurance for individuals and groups and thus increase the fairness which is the goal of the risk classification process. As new needs develop in our changing society, coverages, policies and even new companies will emerge to meet those demands. When a market creates a demand for an insurance product, the industry changes to meet that demand.

One example of how insurance changed to meet the market is found in the development of group insurance. This form of coverage now accounts for 80-85 percent of the health insurance benefits provided by insurance companies. For all but very small groups there is a group premium rate which is the same for all employees or members. At the time of sale of the coverage, the insurer gathers data on all risk factors of the group at large, including age and sex distribution of the group, and uses the data to compute a rate. In this way, although sex is taken into account in rating the group, the ability to insure large numbers of people at one time who share common characteristics allows the company to respond to the market as it has developed and charge a unit rate. Over the years the insurer recalculates the rate based upon changes in the makeup of the group and the experience of the group.

In the case of individual health insurance and in some very small groups, charging a unit rate is not possible since the large numbers of persons with similar characteristics do not apply all at once under a sponsor's umbrella but instead apply one at a time. The rate for individual coverage must be computed in advance to be available for all qualified applicants. Thus, all risk factors including sex are extremely important to sellers in the individual insurance field, and elimination of sex as a permissible rating factor will add significantly to the volatility of this business.

A good example of state laws imposing market changes on health insurance and the results of the imposition is what happened in New York when that state's legislature mandated that all health insurance cover costs for normal pregnancy and delivery. While this was undoubtedly a desirable social goal, the individual health insurance market is particularly unsuited to carry out this goal. (See affidavit of Peter M. Thexton submitted to the Supreme Court of The State of New York in *HIAA et al. v. Harnett* (1976), attached to this statement as Exhibit H). As a result, from 1976, when the bill was passed, to 1980, the number of companies offering individual hospital-medical insurance in the state dropped from over 75 to under 25. These companies found that they could not afford to offer insurance including these benefits to persons under age 40 in this restricted regulatory environment. At the same time, consumers were denied the range of choices that were previously available to them in a competitive market. We urge the Committee to consider this in the context of this legislation as well.

We frankly do not know whether unisex rating proponents are right when they say that the growing numbers of women in all segments of American economic and social life will eliminate or narrow the gap that health insurance experience now demonstrates. We respectfully submit that they do not know the future, either. The market demand for policies and future experience derived from that changing market is the only true indicator of the evolution of risk classification. Legislation such as S. 2204 which is based on an uninformed premise or a misapprehension that there is unfairness to be remedied, forces the market, and thus the business, into an artificial and unsustainable position from which it cannot function effectively.

Given that the cornerstone of insurance is the most accurate possible assessment of probabilities, HIAA and its member companies continue to assert that risk classification systems, properly constructed and professionally administered, result in the highest degree of equity that is possible within the private health insurance business. We have shown that the business relies on the statistical evidence developed over the years, including that on sex differentials. We have stated that the risk classifications emanating from the operation of the system do not result from intention-

al sex discrimination, but merely reflect the process developed to determine the nature and extent of risk of loss and the probable cost of insurance adequate to cover the loss. We have explained that the system is not perfect, indeed by its very nature cannot be perfect. But it improves as new information becomes available, and the system changes to reflect new market patterns. These changes are advantageous to both insurer and consumer since their objective is to arrive at the fairest possible pricing system.

The proponents of unisex rates have not demonstrated to anyone that elimination of sex as a rating factor will result in fairness. They cannot demonstrate that the immediate inequities that would result from mandating unisex rates would ever be counterbalanced. They fail to deal with the cost-sensitivity and volatility of the health insurance business. They do not appreciate the availability problems that result from such legislation, especially in the individual insurance market. And they do not understand that market forces demand a sound and flexible insurance system, not a rigid and static business which has no incentive or ability to improve either in product mix or cost efficiency because of misguided legislative attempts to cure ills that do not exist. We urge the Committee to study the facts about our business, the pressures under which it operates, the steps it has taken to respond to a changing environment, and especially the goals of fairness which we aim to achieve every day. In this context, and on balance, we believe that legislation to prohibit recognition of sex differences in health insurance is unnecessary, destructive, and serves no purpose either for the insurance consumer, the cause of women's rights, or private insurers.

The CHAIRMAN. Thank you.

Ms. Morrison.

Ms. MORRISON. Thank you very much. Perhaps I bring a different perspective because to my knowledge, I am the only one here today who actually sells insurance. I am an insurance underwriter, that is, I write insurance. I am licensed with about 30 companies.

And yesterday, I did a quick calculation on what business I had done since January to give a perspective to what I am saying. At this point I have placed about 118 policies since January in the life and disability field; with face amount of \$20 million in life insurance alone. That is personal protection.

I am a qualifying member of the Million Dollar Round Table, and also and equally as important, I am serving my second term as a commissioner with the Maryland Commission for Women. I include this because I think it is very important to understand that I not only write a lot of insurance but I am deeply involved in women's issues.

A great many women come to me because I do a lot of speaking engagements around the State of Maryland and they have had problems getting insurance, so they ask for my help. I find that there is very serious discrimination in insurance. But today in the time that I have I would like to speak specifically about the area of disability insurance coverage. There are three points I would like to make on that.

First of all, I think we are all aware—and certainly after this morning, anyone who came in here thinking that the rates were equal would be educated on the subject—that rates for women are substantially higher in the area of disability insurance than they are for men, assuming the same job classification.

Now, the companies say that they must charge higher rates because there is justification from the actuarial tables and these tables show women are off the job more often and for longer periods of time.

I really cannot find any studies that are recent on this. The studies I have been able to locate go back into the seventies. I think we

are finding that there is a world of difference in the timeframe between the 1970's and the 1980's with women participating in the work force.

I also find that most companies when justifying the higher rates include the factor of maternity, whereas in individual disability coverage the majority do not offer maternity coverage in their individual policies. So in essence, while justifying the rates to include maternity, at the same time they are selling a product which does not offer maternity.

Some of the discrimination is sexual. Some of it may not be specifically sexual but is indeed societal and, I think, as such creates a secondary discrimination against women. This is an area that has not been brought out today. When we are talking about the data the companies have arrived at, we are saying women are off the job more often, more frequently, and for longer periods of time.

It has been my experience that the majority of women work in the pink-collar or the blue-collar sector and, as such, they are on a time basis. They either punch a time clock or they have to check in or check out in some form, so that if they were away from their job, they are docked on an hourly basis.

I am not saying that this is across the board nor am I saying that there are men whose jobs do not require the same thing; but if we take an office situation, the majority of the executives are going to be men, and the majority of the support staff are going to be women.

For example, if a secretary got a call from her child who had gotten hurt on a playground and she needed to go get this child and take him to the hospital for stitches, she would have to take either personal leave time or personal sick days in order to go or leave the worksite. On the other hand, the executive, who, incidentally, in most cases is male, would say, I am going to have to take my child to the hospital, and check me out for the rest of the day.

I have talked to a number of companies on this when we have looked at statistics. With a major company in Baltimore we had a serious discussion on the fact, and they said, yes, in fact that is actually true, we really hadn't thought about it that way. They are moving, as it turns out, to make some changes, but they were in the process of doing that before I came along.

We also find that the companies say that they cannot afford all these major changes. I find it absolutely fascinating that there are going to be such enormous costs incurred if we have unisex rates, because in the area of disability insurance, I have been writing disability with unisex rates with a company for the last 3 years and they have not changed their rates, they have not had to abandon their unisex rates. I get their annual report. They are doing very well.

On top of that, as of this past month, Monarch, which is one of the major carriers of disability insurance, has changed their top or executive rates to unisex rates. It is available, it has been licensed or filed for license in 50 States. It will be available within a matter of a couple of weeks in Maryland, and it is going to make a very substantial difference in women's premiums.

I have checked because I am a broker, because I am licensed with maybe 30 companies. Companies call me all the time and ask

me to sell their particular products, or if there is a new product that they feel is going to be very beneficial, they want to bring it to my attention.

For the professional woman aged 30, and these are doctors, lawyers, and accountants and industry people with a substantial amount of employees, if she were to take a \$3,000 a month disability coverage through the age of 65, her premium is going to drop almost 50 percent with this new Monarch product over anything that has been available heretofore of comparative worth in the marketplace.

Now, nobody has forced Monarch to do this. Monarch, I think, has awakened to the fact that they do not have good data available on the professional woman, and they have just arbitrarily decided to make the change.

The CHAIRMAN. I assume they are doing this on the basis that she is a professional, not a woman?

Ms. MORRISON. This is a professional category.

The CHAIRMAN. What you are telling me is they have found a way to classify other than on the basis of straight sex.

Ms. MORRISON. Exactly. It is equally as important for the woman doctor to get back to her practice as a male doctor, that it is highly unlikely that she will malingering, that she cannot afford to be away from her job longer than a man. And they must have done some statistics because they are going out to the marketplace and they are going to put themselves on a line with almost a 50-percent reduction in previous rates for the identical person doing the identical job.

By the way, Equitable Life Assurance Society—my testimony says "Insurance," and I understand there is another company with the same name—has just filed for the similar reduction of rates in the professional category. I have been recently subpoenaed, within the last month, to testify in a case of *Equitable Assurance Co. v. Human Relations Commission in Maryland*, and Equitable was saying that they could not possibly have unisex rates, that it would cost them too much money, that the statistics and the data were such that they justified the division by sex. At the same time, it was found that they had filed in Maryland, had proposed unisex rates, and their filing includes enormous background information and justification for reasons to have unisex rates.

Summarizing what I would like to say, I really think it is a marketplace decision. I would hope that women's groups and others who are concerned in this area will move to do business with those companies who have found it expedient to, if you will, take the risk and go to the unisex table, because they are thriving.

And I would be delighted to answer any questions.

[The statement follows:]

STATEMENT OF ELIZABETH S. MORRISON, MANAGER, FINANCIAL SERVICES, HERGET AND Co., INC.

I wish to thank the members of the Senate Committee on Commerce, Science and Transportation for allowing me to testify before you today on the area of discrimination in insurance.

Because of the many and varied areas of insurance and facets of discrimination that do exist, permit me to address just one area today—discrimination in disability.

I would like to state at the onset that I am an insurance underwriter licensed to sell life insurance and disability products through approximately thirty (30) insurance carriers. While I also have my NASD license and handle IRA's, annuities, etc., my main focus is in life insurance and disability insurance.

I am a qualifying member of the Million Dollar Round Table and have now numerous national sales achievement awards as well as currently serving on the Board of Directors of the Baltimore Life Insurance Association. Since January 1982, I have personally written over 20 million dollars of life insurance.

In addition, I am serving my second term as a Commissioner with the Maryland Commission for Women.

I include this background because it is important to have the Committee understand that I do write a lot of insurance and that I am also deeply involved in women's issues.

As a Commissioner, I speak with many women who need to purchase disability insurance and contact me to help them make this purchase. Often they have been declined coverage prior to contacting me.

There is grave discrimination in the area of disability coverage and I would like to highlight three (3) specific areas where I know discrimination to exist.

1. Rates for women who wish disability are normally substantially higher for the same coverage and assuming the same job classification as men. The companies state that they must charge higher premiums for women because actuarial tables indicate women are off the job more often and for longer periods of time than men.

In researching this, I have found that the only studies currently available were done in the early 1970's. In terms of women in the workforce, there have been enormous changes the last decade and I do not believe that data collected ten (10) years ago is at all accurate today.

In addition, the companies do not currently offer maternity as part of their coverage for individual disability except in very rare cases. Selected Risks of New Jersey at present includes maternity under their definition of sickness in individual disability policies.

While some of this discrimination may not be specifically sexual, it is indeed societal and thereby creates a clear secondary discrimination against women. I speak specifically of the many women in the work force who are responsible for minor children. Whether they are married and have a spouse in the home or they are single parents, if their child is ill or hurt in an accident, the usual process the woman must undergo is to leave work—using either a personal leave day or a personal sick day. Only a small percentage of women are in professional positions and can leave their office without some sort of time deduction.

On the other hand, the man in our society in a white collar job can leave the office without punching a time clock. If he is called to take care of a sick child, he need only tell his secretary that he will be gone for the day and to take his messages.

Obviously, I understand this does not hold in all cases, but if we take the average office situation as a microcosm, data will probably show many women using sick days more than men. While society expects women to be the caregivers, this problem will persist. However, it should not be taken as justification for higher rates on disability when in fact it is not a health problem but a workplace problem.

2. Companies tell me they must charge substantially higher rates for women because women are out longer periods of time. In most cases, individual disability policies do not include maternity, yet maternity is included in the company's justification for higher rates. This is obviously the height of discrimination or "double jeopardy".

3. Several companies have recently changed their top executive (AAA+ or 4A) rating to unisex rates. Specifically, Monarch is now offering unisex rate disability to professional women. This new rate makes a substantial difference in women's premiums. A professional women age 30 wishing \$3,000 a month coverage to age 65 will find her premium dropping \$1,000 a year or over 50 percent from previous costs.

When pressed about the sharp variable in premiums, companies state that they must charge these rates because economics and actuarial data show women to have greater expenses. This is clearly questionable.

I have been writing insurance business for the last three years with one company that uses unisex tables for disability. The company has lowered the female rate to be the same as the male rate. They have apparently found this economically viable, since they have offered the policy with no alternations for the past three years. In addition, the company seems to be quite profitable.

Equitable Life Insurance Company recently filed for unisex rates for disability policies for the top professional category. The filing was made in 50 states and, I

understand, the policy is already available in several states. It is still pending in Maryland where it is currently undergoing review.

In addition, Equitable, in filing, offered substantial material justifying proposed lower female rates on their other categories for females. Specific examples on proposed rate changes filed by Equitable show the greatest difference between male and female rates to be 9.5 percent and decreasing from there to as low as 3.57 percent in the 46-50 age group to no difference in the age grouping over 56 years of age.

I find it bizarre that Equitable could be filing for unisex rates at the same time that they are arguing against unisex rates in a hearing that took place recently in Baltimore—the Human Relations Commission vs. Equitable Life Insurance Company—on a case of discrimination in disability.

Since I broker for my clients, searching the marketplace for the best product to meet his or her needs at the least cost, I am contacted constantly by company representatives who wish me to sell their products.

It has recently been stated to me by a Monarch Brokerage representative that the new unisex tables available through their company are a result of their own studies. Accurate studies on professional women are not available since substantial numbers of women have not been in the professional ranks long enough to gather representative data. I was told that Monarch felt that a female doctor or female lawyer would be just as anxious to return to her practice as a male lawyer or doctor and therefore, the company felt that it has an equal rather than unequal risk.

Currently, agent commissions are paid as a percentage of premium. Only 50-55 percent of the insurance premium is based on actual morbidity, the remaining 50-45 percent being the underwriting cost, home office expenses, etc. and commission. Only morbidity could possibly be taken as higher cost for women. Surely underwriting expenses are identical. The discrimination problem could be drastically reduced immediately if the commissions on men's and women's policies were figured differently and not on an automatic percentage of the premium—which only magnifies the existing spread between men and women's rates.

Finally, I wish to address an entirely different but extremely serious area of discrimination in disability for women.

I write many disability policies for women and more and more frequently my client is a woman who is the product of a recent divorce. Often she has been married 20 or more years to a professional and, if she worked early in her married life, she has not worked recently.

Now she must re-enter the job force, usually with non-existent or out-of-date skills. She will often start out taking a job with a small business or non-profit organization that does not offer disability coverage. It is very hard to get her adequate disability coverage, not because she isn't qualified, or because she isn't in good physical health, but because during the stress of the separation and/or divorce she saw her physician for assistance and was almost certainly given Valium. In addition, her doctor probably recommended she seek counseling and she got psychiatric help during the period of the separation. While the psychiatric or psychologist gave her third party objectivity and counseling that was probably very useful, the fact that she has this counseling is very openly used against her by the insurance industry. She is seen as "unstable" and frequently is declined disability coverage. The head underwriter of one of the major Mutuals for whom I used to write disability told me that the company felt that if one saw a psychiatrist under twelve (12) times that was all right. If one went 12-20 times it was questionable; and if a client went over 20 times, it indicated a severe problem and therefore, the company saw the applicant as a high risk.

Many women clients with whom I have worked saw a psychiatrist approximately once a week over the year of their legal separation prior to their divorce. This, in insurance circles, makes them a "high risk".

I want to emphasize here that I have no reason to believe that men would not be treated exactly the same way. However, it is very unlikely that in our society, the man's doctor would prescribe Valium and also it is not the usual pattern for a man to get psychiatric support during a separation. What we have is a society that preaches mental health but penalizes in very real economic ways if one takes advantage of mental health support.

Finally, it is very important that the life insurance industry gather new data based on today's family pattern with many households headed by single women and over 50 percent of the country's women in the workforce. The inherent discrimination built into the existing system can no longer be justified by outdated actuarial tables, and the assumption that women are exclusively homemakers and do not have economic value.

I urge the Committee to take strong action to redress these wrongs and I thank the members for allowing me to testify today on discrimination in disability.

The CHAIRMAN. I am going to move for a moment to the life insurance, and Mr. Freeman, and black versus white. I read earlier from this history of the Metropolitan Life—it is done by a sympathetic author. It is one of those commissioned books. It is not trying to paint the company terribly. It is trying to paint it favorably.

It talks about the history of "writing coloreds." This refers to blacks. It goes back to the 1870's. It says that time and again it has been demonstrated that the mortality of colored lives is significantly greater than that of whites where Metropolitan is trying to write insurance on colored lives, but it has experience on mortality rates.

Ms. Lautzenheiser, was that common of a number of companies a few years ago?

Ms. LAUTZENHEISER. I am not sure it was common. I was not there. I do not know.

Historically, in 1900 white mortality was approximately 69 percent of black male mortality, so there was a significant difference at that time. By 1977 that ratio had risen to 93 percent. So the difference now is inconsequential.

I believe Dr. Laycock spoke earlier to the fact that the difference between males and females was smaller in 1900 than it is now.

The CHAIRMAN. I am intrigued by the inconsequentiality, because the statistical abstract says it is 5 years difference between black and white.

Ms. LAUTZENHEISER. There is a difference in the younger ages.

The CHAIRMAN. I understand that.

Ms. LAUTZENHEISER. Black males actually have better mortality at the very high ages.

The CHAIRMAN. Now, if you sell a policy to a 20-year-old male that is black, he pays the same amount as a 20-year-old white, even though they have a 5-year difference in life expectancy?

Ms. LAUTZENHEISER. That is correct. The nonwhite population is approximately 13 percent of the population. On a soundness basis, that is not the same as the male-female split.

The CHAIRMAN. Where you have a statistical difference, why not keep the statistical differences in the policies?

Ms. LAUTZENHEISER. Because, as someone reported earlier, the difference was felt to be socioeconomic rather than being genetic. That has proven to be true.

The CHAIRMAN. What you are saying is, 50 years ago, 100 years ago, we did not have any better statistics on black and white and you had a significant difference. Now you have better methods of classifying. And the fact that somebody is poor and deprived is more relevant than if they are black or white, so you do not need to use the black-white classification any more?

Ms. LAUTZENHEISER. Black and white is not necessarily a surrogate for poor, but it is more of a surrogate than is male and female.

The CHAIRMAN. You have other characterizations that are more relevant than black and white?

Ms. LAUTZENHEISER. That is correct.

The CHAIRMAN. You were unable in terms of sex to find any more relevant characterizations than the male and female?

Ms. LAUTZENHEISER. That is also correct. We find it is genetic. Prior to birth, where there is no surrogate possible, there is a mortality difference of some 20 to 25 percent.

The CHAIRMAN. What about these disability policies Ms. Morrison is talking about, where they are changing policies for certain categories of women?

Ms. LAUTZENHEISER. I am not necessarily an expert on disability. I work more on the life insurance side.

It is significantly different for one company to make a change, whether it is for life insurance or it is for disability insurance. As I indicated, on the nonsmokers there were virtually, I believe, only two companies that went to nonsmoker rates during the first several years after the 1964 Surgeon General's report.

Similarly, these companies going now to unisex rates are not going to know whether or not there is a difference until the experience can be abulated. Having all companies do it would cause financial dislocations. Having some companies do it still would leave the freedom of the person to go to another company where the rates are in fact differentiated.

The CHAIRMAN. How can they be complaining about unisex rates?

Ms. MORRISON. This particular case I was subpoenaed to be a witness in was a case that started in 1974. They have appealed on three separate occasions, so it goes back a few years. But their basis is still that we must justify this for business practices and at the same time have a filing in 50 States giving exactly the opposite information.

Mr. FREEMAN. Senator, I have listened to these arguments for over 40 years. The statistics you are talking about, Metropolitan and Prudential, those companies did discriminate because of race, no question about it. They used as a basis of fact that Negroes at that time did not live as long as whites.

You could find 20 million whites, as I point out in my paper, that would be equivalent or have a higher mortality table than 20 million Negroes. So it was not a question of trying to separate groups by socioeconomic conditions, but they were segregated purely because of race or ethnic background.

Industry is responsible for what it has created today. The Actuarial Society has created the separate tables on which they are basing their discriminatory practices. It is up to them to change them. To rely on statistics which treat Americans in a separate way is wrong.

We could go on with this argument, but there is no real justification in my mind. Those companies we are talking about, they would not even hire me because I was a Negro in 1945. I approached all of them and I thought I was qualified, but I could not even get a job.

If they had kept mortality tables for American lives, they would have included all the poor whites, the poor Negroes, everybody else, and had one standard table to use.

Ms. LAUTZENHEISER. To do something for a social purpose does have financial impacts. That is the particular point we are trying to make. Financial impacts both as to availability of coverage, financial impacts as to the individual cost to a woman, which will be

10 to 25 percent more than it is now for life insurance, financial impacts to the State retirement plans, which are going to try and postfund the new requirements.

There will be marketing impacts. It is that point that I think needs to be made clear. Some persons will be disadvantaged.

The CHAIRMAN. I know. I understand the point. I am not unsympathetic to it. I lived through the era of housing discrimination in Oregon. It would cost the landlords more, there was a cost to society. I am not sure the argument was valid. If there was a cost, it was a cost we should not have been paying. There are some things that are more important than money.

Ms. SHER. That is a decision we have to leave to you. We are simply telling you, the facts are there is a cost associated with it. If you determine that there is greater value in the social ideal of this bill, then, as you have heard, the industry will find a way to deal with it.

Ms. MORRISON. Could I add one thing, please, on this cost, because I am paid on a commission basis, so I am very aware of what costs the companies incur and whether one has a general underwriting contract and so forth. I can speak only in the area of disability because that is what I came to speak about today, although I think it would hold in life insurance, too.

In the case of disability insurance, only about 50 to 55 percent of the insurance premium for a given product is based on actual morbidity. The rest of it is home office costs, it is underwriting costs, it is whatever. Now, we are paid on a commission basis, which means if I sell a woman a policy and her cost is \$1,300 a year and I sell a man a product, an identical item by the way, and let us say he is going to pay \$900 a year for the identical product, I am going to get 50 or 45 percent of each premium.

Now, it strikes me that it does not cost me any more to sell a product to a woman than a man. One of the ways this cost could be cut down very quickly and offset so-called higher costs to the company would be to adjust the premium commission basis so that it was equal, so that I got paid the same amount whether I sold to a man or a woman, be it life insurance or health insurance or disability.

The CHAIRMAN. You are a refreshing witness. I do not mean this in a derogatory way. We usually have the representatives of associations and we very seldom get people in the field. It is inevitably necessary. I do not mean that in a derogatory way, but I think every now and then they lose touch with what happens day-to-day.

Mr. FREEMAN. Senator, I would like to make just one extra point. We speak about additional costs. Maternity is a basis for charging higher rates for females. Behind every pregnancy is a man and I think a man should share those costs. I think we should take that into consideration.

The CHAIRMAN. Yes.

Ms. LAUTZENHEISER. I think I would like to point out that it is not the insurance industry that will wind up bearing these costs. It is the consumer that will be taking the losses, either in different kinds of premium structures or in less overall coverage.

My personal opinion is—and I have not run the statistics on this, but I am fairly sure I am correct—by and large, the largest number

of women receive their health benefits and their pension benefits through their employer. Generally these are costs mostly borne by the employers and the benefits are equal, with equal benefit to the woman.

The two pieces of insurance that are generally purchased individually by a woman, not provided by her employer, are life insurance and automobile insurance. As a result of this entire legislation, the total impact will be higher costs for women, because those things they provide for themselves, life insurance and auto insurance, will be more costly. Those things employers are now paying for will be less costly.

Mr. FREEMAN. If there had not been discrimination in the first place, they would not have that condition today.

The CHAIRMAN. Let me ask you this in conclusion. I have been in this business 20 years. I am impressed with the panoply of women that supported this. I could not find any that opposed it. Again, these are smart women. They understand the statistics you are talking about. They are apparently willing to say, if indeed your statistics are right, we will accept the costs. We want to be treated equally.

What difference should it make to the insurance industry if as a matter of policy we decide to go ahead with this? Why do they care? They will have to adjust their rates. Some people pay more, some people pay less. But they will not be discriminatory. Why should the industry care?

Ms. LAUTZENHEISER. Because one element of being able to price by classes that provide a more competitive product actually is missing. One of the cost elements is missing. We also are going to have to make assumptions as to how many males and females will be in the population, how many will stay.

We are not talking about something where you can determine the cost for 1 year. You are charging a price that is guaranteed for a lifetime. You have to set up reserves for a lifetime and make sure you have enough income for a lifetime. To do that, we will have to become very conservative. We will have to run the price up for everyone. And it will inhibit competition in the marketplace.

The CHAIRMAN. But you all have to compete equally.

Ms. LAUTZENHEISER. Different people can make different assumptions and actually market to more women in one area and more men in another.

The CHAIRMAN. I understand that, but that is something any company can attempt to do if the law is changed. It does not give one company a leg up over other companies.

Ms. LAUTZENHEISER. Except that if everyone moves toward the lower risk, the other cost factors may not be available. That is why you have some of the high risk pools that you have.

The CHAIRMAN. Ms. Sher?

Ms. SHER. It happens that this targets sex as a classification factor. If it did not target sex, if instead it targeted age, occupation, et cetera, any important risk classification category, I think you would hear the industry here opposing passage of the bill for this very same reason.

It is a tool that we feel we are justified in being able to use. It is a significant reliable cost factor. We want to be able to continue to

use that cost factor. In this instance it happens to be sex. Should S. 2204 pass, perhaps the next one will be age, and so on down the line.

There are vested interests throughout our society, and we really did not want to comment on this as a social aspect, but we do want it clear that you are tinkering with our tools. And it happens that the tool we are talking about today is sex.

The CHAIRMAN. Dr. Bergmann?

Dr. BERGMANN. I would like to answer that directly. The reason that the women's organizations are opposed to the use of sex as a classificatory device is that it has historically and is today being used by the insurance industry to disadvantage women.

I would remind the Senator of the idea of a suspect category in law—one which has been used to disadvantage people. Race is one and sex is another. Therefore, Sex is not an innocent mode of classification in like any other. It's use has, on balance, caused disadvantage.

The CHAIRMAN. Again, we thank all of you. It has been a most informative morning, from the time we started until now. And I especially appreciate the last panel's indulgence and patience in waiting. Thank you.

[Whereupon, at 1:12 p.m., the committee was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF THE NATIONAL ASSOCIATION OF INDEPENDENT INSURERS

Since its inception, the National Association of Independent Insurers has been dedicated to preserving a strongly competitive marketplace under sound state regulation. In order to continue encouraging such growth, we must oppose any unwarranted federal intervention in the regulation of insurance, such as that proposed by S. 2204.

NAII, a voluntary trade association of more than 500 property and casualty insurance companies of all sizes and types, opposes S. 2204 on the following grounds:

Enactment of S. 2204 is unneeded and unwarranted because the state insurance regulatory systems have proven fully responsive to the public needs.

Adoption of S. 2204 would erode the competitive environment in the insurance industry and would impose an unwarranted levy of additional costs on one segment of the insurance buying public to subsidize another.

The property/casualty industry has been meeting its responsibilities in the marketplace by expanding overall capacity, affording a broad choice of prices, products and services for the consumer, maintaining adequate financial stability and guaranteeing availability of insurance to all consumers who cannot readily obtain it in the voluntary market.

The insurance industry is unique in American business today because it is not only closely regulated like public utilities, but it is highly competitive. Insurers must price their product within the confines of a rigorous competitive market and, unlike a public utility, are not guaranteed a return on their investment.

In addition, insurers do not price their product like other businesses with full knowledge of their cost. This factor is unknown at the time the product is sold and, therefore, must be predicted as accurately as possible. This is where insurance rate-making comes in.

Ratemaking involves estimating the probability of the occurrences of accidents and the financial impact that may be expected to result from the hazards against which insurance is provided. To establish a fair price for insuring an uncertain event, probabilities associated with the occurrence and the financial impact of the event must be estimated. The greater the probability of occurrence and/or financial impact of the event, the greater is the price of insurance. In other words, to be fair, the price of insurance should be in proportion to the risk being exchanged.

Initially, estimates made by insurers were necessarily on a judgment basis. But as experience grew and the knowledge of the ratemaker increased, companies have, by means of collecting statistics, been able to develop and refine methods of analyzing rating techniques. Rates generally are based upon past experience. By reviewing data from the past, the ratemaker can anticipate future losses and expenses.

Since it is impractical to establish loss exposure for each individual, insurers have developed the concept of risk classifications, groupings of similar risks, based on statistically well defined categories having significantly different loss potential and loss costs.

Use of risk classifications has made it possible for insurers to offer the public increasingly competitive plans, while at the same time assuring that each individual is charged a premium common to all persons with essentially the same exposure. Risk classification, therefore, helps insurers price their product equitably by identifying those more likely to incur losses.

Classifications must be broad enough in the numbers of exposures to permit the development of credible statistics. The greater the volume of each grouping, the more significant the pattern will be. Volume alone, however, is not sufficient. The concept of homogeneity also is important in class rating, since it is desirable that the expected losses of all members of a group be close to the mean as well as to each other.

After collecting and analyzing approximately 50 years of loss experience, insurers have determined the most accurate "predictor" classifications for auto insurance ratemaking to be age, sex, and marital status of the driver and the territory in which the vehicle is garaged.

The use of these criteria as rating factors has been found to be an equitable, objective and practical method of distributing costs among insureds. They are justifiable, too, on the basis of statistically supported data.

The issue appears to be not one of discrimination versus nondiscrimination, but that of fair versus unfair discrimination. Insurers do comply with the rating laws that prohibit unfair discrimination. It is true that they do differentiate between men and women, but only out of the necessity to be more equitable in their pricing techniques. Not to rate men and women differently would certainly be unfair discrimination.

To illustrate the different loss experience between male drivers and female drivers, NAIH has developed nationwide statistics by sex of youthful drivers. It is noteworthy that rate differentials on sex disappear as age increases because differences in losses disappear.

These statistics show that, as a group, all youthful male drivers incur an average loss cost (the average loss per insured vehicle) that is 31 percent greater than their female counterparts. In particular, the class of young single male motorists has an average loss cost that is 42 percent greater than the class of young female motorists. Clearly, the average youthful male motorist indicates a higher risk (loss potential) in automobile accidents than the average comparable female motorist.

If the sex of the insured is eliminated as an automobile insurance rating criterion, then, all other factors being equal, every youthful driver will be charged the same rate, i.e., the overall class average rate. Since the total amount of premium which an insurance company receives will not change, what will take place is a redistribution of rates among all young policyholders.

Should the removal of sex as a classification factor occur, then young female drivers, constituting 31 percent of the young driver population, will have an average increase of 21 percent in liability premiums in order to compensate for a mere 7 percent decrease in premiums given to young male drivers.

Other organizations have also collected statistics comparing the driving patterns of male versus female motorists. For example, in its 1981 edition of *Accident Facts*, the National Safety Council indicates that over the sixteen year period 1965-1980, the accident rate of male drivers overall was 20 percent greater than that of female drivers.

Restrictions imposed on the current rating structure, which is based on well-documented accident rate statistics, would actually end up hurting motorists in high risk categories. They would find it difficult to obtain insurance in the voluntary market, and would be forced to seek coverage in the residual market, most likely at a price greater than that which is charged today under the current rating structure. Those insureds remaining in the voluntary would end up paying higher premiums as a result of this market dislocation.

Not only do restrictions imposed on the rating structure lead to problems of availability and affordability, but they will inevitably result in an erosion of the competitive market.

To illustrate, assume that insurers are prevented from using a person's sex as a classification criterion. As previously indicated, insurers know from past experience that young male drivers are involved in more accidents, which makes them as a group much more costly to insure. If an insurance underwriter, operating in a competitive environment and making decisions based on sound business judgment, believes that a particular risk is improperly classified and is over-or-under-priced, he will purposely seek to either write or avoid that risk, respectively.

The result will be a reluctance by companies to compete for the younger high-risk driver, forcing such drivers out of the voluntary market and into the residual market.

Most objections with regard to the present classification structure involve the social philosophy that underlies these criteria, and not the validity of accepted statistical principles of risk assessment. However, questions of unfair discrimination and social acceptability cannot be separated from competitive considerations. Any attempt to establish artificial barriers on ratemaking which would preclude insurers from pursuing sound and legitimate business practices will have the inevitable result of "chilling" competition in the voluntary market.

Classifications are a necessary part of the determination of expected costs in providing insurance coverages, as groups with different loss propensity can be identified. Each group of insureds must pay its fair share of losses.

Should different criteria for classifications become justified, companies will use their initiative to incorporate them into their systems which will benefit the insurance buying public. This voluntary competitive system is far better, more flexible and fairer than one that is based upon socio-political schemes that ignore economic realities.

In conclusion, the automobile risk assessment process should be free of restrictions that would prohibit competition and bring about forced subsidies for one group of insureds at the expense of another. It is the responsibility of not only the insurance industry, but also legislators and regulators, to inform the public of the vital economic theory which underlies the purpose of rating criteria. It is hoped that once consumers understand the real issues involved, they too will agree that the present system is fair and reasonable.

STATEMENT OF S. ROY WOODALL, EXECUTIVE VICE PRESIDENT, NATIONAL ASSOCIATION OF LIFE COMPANIES

The National Association of Life Companies (NALC) represents primarily small and medium-sized life and health insurance companies. The NALC was founded in 1955 with a charter membership of 43 companies. Today our membership is approaching 300 companies that have over 165,000 home and field employees, 385,000 shareholders, and millions of policyholders.

NALC's members do not discriminate in life and health insurance on the basis of race, color, religion or national origin, or on the basis of sex with regard to the availability of coverage. Moreover, our members fully support and practice fair and equitable treatment for both men and women with respect to life and health insurance. However, we cannot endorse a bill like S. 2204 which is both unnecessary and detrimental to the interests of consumers and insurers.

NALC strongly opposes S. 2204. This legislation, however well-intended by its sponsors, would be counterproductive. Instead of helping ensure greater fairness, its practical effect would be to cause great inequities. If enacted, S. 2204 would result in:

(1) Unfair insurance rates, including significantly higher life insurance premiums for women; and

(2) Substantial new costs which would be particularly harmful to smaller insurance companies.

When interested persons think of life and health insurance, they often think only of the few giant companies which have the resources to advertise heavily in the mass media. Such large companies obviously are a vital part of the industry, and admittedly they have substantial administrative and legal staffs that often can better cope with new regulations than their smaller counterparts. Yet, it must never be forgotten that there are hundreds of smaller companies which have thousands of agents and stockholders, and which provide important insurance products for millions of Americans. Often, it is these smaller companies that respond most quickly to consumers' needs with innovative new products and marketing techniques.

Such smaller companies must be efficient to compete effectively with the giant companies. Unlike the larger companies, they do not have the option of absorbing unanticipated regulatory costs by spreading them through a huge policyholder base. For many smaller companies, each added cost or new regulatory burden, when considered along with the cumulative impact of existing regulations, makes it more difficult to compete meaningfully. Inappropriate regulatory proliferation not only increases costs to insurance consumers, but it can lead to increased failures of smaller companies or their forced merger with larger companies, thereby reducing the number of competitors within the insurance marketplace.

Therefore, we urge this Committee to carefully weigh how this bill's provisions would affect smaller insurers. Congress already has recognized the appropriateness of giving special consideration to minimizing the significant economic impact of federal rules on small business when it passed P.L. 96-354, the "Regulatory Flexibility Act." Congress correctly found in the "Reg-Flex" Act that "uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses" We feel that S. 2204 proposes precisely this type of inappropriate regulation that is especially harmful to smaller companies.

FAIR RISK CLASSIFICATION IS ESSENTIAL

Most of the debate over S. 2204 relates to its prohibition on using sex as a basis for setting insurance rates. Therefore, I will first focus my remarks on this issue. NALC, like most insurance organizations, objects to this provision because it would result in unfair premium rates which are not equitably based on costs. To understand why this would occur, this Committee must first understand the basic nature of insurance and risk classification.

Contrary to the beliefs or wishes of some, life insurance and health insurance coverages are not social welfare benefits. Instead, these are private, commercial products that consumers purchase voluntarily in the marketplace. Consumers buy life and health insurance to obtain protection against various risk such as—illness, disability or death. Individuals' needs and desires for such coverage vary greatly, and insurers accordingly offer a wide range of benefit levels and coverages so consumers can select those that best fit their personal requirements.

The price for this protection must be set on a fair basis. Insurers try to do this equitably through identifying the key risks involved and classifying these risks into groups so that persons with similar risks can be treated fairly. Premiums are established on the basis of the projected costs for the various risk classifications. Higher risks are charged higher premiums to cover higher costs. Lower risks are charged lower premiums to cover lower costs. Therefore, for example, 60 year old men are charged more for life insurance than 20 year old men because the risk of dying normally is far greater for 60 year old men than for 20 year old men.

Obviously, risk classification is essential to ensure the purchaser is charged a fair price in relation to the costs involved. We believe most consumers understand, accept, and indeed demand such fairness. It would be inherently unfair in most cases to disregard different risks and simply charge a flat rate. If insurance rates are not set on the basis of projected costs to categories of risks, some people will pay far more than their fair share for insurance protection. For instance, all other things being equal, a man is not likely to live as long as a woman. If the available data on life expectancy does not warrant assigning to him a low probability of death, he will be treated unfairly if he is charged a low premium. Similarly, to promise a woman a lesser amount than is warranted by the data on her life expectancy would be to treat her unfairly. NALC feels that neither women nor men generally would favor such inequities.

Therefore, NALC is firmly committed to risk classification as a means of insuring fairness to policyholders, and of reliably projecting costs so that companies can maintain their financial integrity. The issue then becomes whether sex is a fair and necessary classification consideration. NALC believes that it not only is fair to consider sex as a classification factor, but that it is essential.

SEX IS A FAIR AND RELIABLE RISK CLASSIFICATION CONSIDERATION

Life and health insurers generally do utilize sex as a means of predicting mortality and morbidity. Why? Because sound statistical and actuarial data has established the fact that there are significant differences in mortality and morbidity between men and women. Thus, as a group, women live longer than men. Actuarial data also shows women's morbidity rates are higher up to around the age of 50 and then become lower. Past hearings on this type legislation have documented such differences in great detail.

What do these mortality and morbidity differences mean? The differences mean different costs for providing benefits to men and women.

We doubt if anyone present today is very surprised that such differences exist. We all know that the sexes have different biological and physical characteristics. Admittedly, while there is scientific evidence to help explain these differences in mortality and morbidity, we do not yet fully understand why they exist. Insurers realize that there are other factors besides sex which may be relevant in predicting mortality and morbidity. Such factors—age, occupation, health, and certain aspects of one's lifestyle—also are taken into consideration where appropriate. However, while such other factors also may weigh into a projection of mortality or morbidity, the fact remains that sex, like age, is a critical element which is highly reliable in predicting risks and therefore in projecting costs. Furthermore, the fact that sex is an immutable characteristic makes its use for insurance classification valuable.

Insurers, particularly smaller insurers, must be able to make such reliable cost projections. Companies must not be forced to gamble recklessly on unsound mortality and morbidity projections. We cannot expect the government to bail out insurers who set rates too low to cover costs, and company losses or failures therefore would fall on policyholders and stockholders.

If viable alternatives to using sex in risk classification were reasonably available, sex classification would be less important, or even, unnecessary. However, such alternatives are not available. Although actuarial science is constantly evolving, actuaries tell us that it has not yet reached the point where statistically sound projections can be made to accurately predict mortality and morbidity relying solely on factors other than sex. As better data are gathered for known risk factors, and as new ones are found, insurance companies can make even more informed decisions about individual and group risks. Sex classification, which generally is fair and accurate, therefore is essential for evaluating many types of risks. Without such sex classification, premiums would not be based on reliable projected costs. This would be totally counter to the normal functioning of the insurance marketplace.

Two alternatives have been suggested to replace sex classification for rating purposes. First, it has been proposed that "unisex" mortality and morbidity tables be utilized. The advocates of unisex rates have not demonstrated that elimination of gender classification would result in fair treatment. If such "unisex" tables were used, women would pay less for annuities, but more for life insurance. Most industry estimates call for at least a 10 percent life insurance premium increase for women. Men on the other hand would pay less for life insurance, but more for annuities. Women would pay less for health insurance in many age ranges while men would pay more. However, none of these rates would reflect the projected costs for men or women. Sometimes women would pay more and other times less than their fair share based on costs. The same would be true for men. Thus, "unisex" pricing would be quite inequitable and totally contrary to allowing the voluntary market to work freely to set rates based on costs. The major effect would be a redistribution of premium dollars and a decrease in life insurance coverage.

The other proposed alternative calls for insurers to try to classify risks without regard to sex on a cost basis by relying far more heavily on other factors. Under this approach, women and men would be in the same risk classes, but different classes would be set solely on the basis of age, occupation, health, habits, lifestyle, etc. A number of proponents of this legislation have advocated this approach to risk classification.

This second alternative will not work because, as noted above, actuaries tell us that they simply cannot accurately project costs relying solely on such other factors. Rates would have to be "guesstimates" which often would not fairly or accurately reflect costs. This would be inequitable to men and to women. It also would place severe pressures on smaller insurers because they would have to keep rates competitive in order to compete with large companies. However, when the "guesstimates" were wrong, as they often would be, the insurer would be faced with substantial losses. Smaller companies simply would have far more difficulty absorbing such underwriting losses, and their financial integrity often could be threatened. Large companies, on the other hand, might be more able to carry the losses through income from investments and by spreading the costs through their huge policyholder base.

There is another real problem with the idea of relying on more detailed personal information to classify individuals into risk groupings. The simple fact is that it now is often expensive and difficult, and frequently impossible, to obtain or verify such data.

Public and Congressional concerns over privacy and the making of subjective (and allegedly arbitrary) underwriting judgments based on such data already have helped curtail the level of personal data used by insurers. These concerns have caused individuals to be less willing to provide such information. Moreover, when this data is provided, it is more difficult and expensive to verify it. Increased energy and personnel costs have made it very costly to utilize investigators to help obtain or confirm such data. Yet, past experience has shown that it is essential in many cases to verify information which is used for insurance underwriting and claims purposes. Insurance fraud is a real and costly problem. It is especially troublesome in the disability area.

Small companies, and for that matter most larger companies, would have to hire far more investigators to help gather and confirm such data. Additional subjective underwriting also would be required. This would significantly increase expenses and certainly would increase privacy concerns.

Therefore, using other detailed personal data to replace sex for rate classification purposes would not be a viable alternative. Not only would it often be difficult and expensive to obtain additional data, but actuaries still could not make the necessary sound mortality and morbidity projections using such data unless sex data also could be used.

RETROACTIVE APPLICATION OF S. 2204'S PROVISIONS WOULD BE GROSSLY UNFAIR

One of the most objectionable aspects of this bill is its retroactive application. It unfairly penalizes policyholders and insurers who acted in accord with all applicable laws when the contract was made. The cost effects of this provision on smaller companies would be devastating. It could seriously jeopardize the financial stability of many smaller companies. S. 2204 would force insurers to charge equal premiums and pay equal benefits to men and women on existing policies. In our opinion, this unconstitutionally impairs the contract rights of companies and would definitely lead to litigation.

We ask you where does the money come from to cover the costs of the new benefits or of the decreased premiums for certain insureds? Section 4(c)(2) of the bill prevents payments under existing contracts from being decreased, while premiums could be raised only if "clearly necessary" to comply with the nondiscrimination requirements. It is certain that companies often would not know, at least within the short 90-day phase-in period allowed, what was "clearly necessary." Where does the money come from to pay litigation costs that certainly would arise when women who bought life insurance on a guaranteed rate basis sued when their rates were increased substantially due to a new higher unisex rate structure. If women's rates are not adjusted upward, men's rates would have to be adjusted downward to the level of women's rates because men could not be charged a higher premium. Where does the money come from to pay the losses of such premiums? The existing level of premiums is necessary to cover projected costs.

What about the costs in the annuities area where premiums already have been paid but benefits still must be paid for decades? Where does the money come from to pay the millions of additional dollars that would be required to equalize such annuity benefits? Smaller companies certainly do not have the money to absorb new benefits costs, nor the greatly increased administrative expenses that would arise from the changes.

We have raised the preceding questions because such issues necessarily arise when we move from the philosophical level to the practical level. As a matter of public policy, it is necessary not only to address social interests, but also to consider the costs of implementation. Major new costs clearly would occur, yet there is no apparent means of recouping these costs. This Congress, more than any in recent years, has recognized that deficit government spending is unwise. Congress must not now force insurers to provide benefits on less than a cost basis.

INSURANCE REGULATION SHOULD REMAIN AT THE STATE LEVEL

Congress long ago established the basic policy through the McCarran-Ferguson Act that insurance is generally to be regulated at the state level. States have taken their duties seriously, and unfair discrimination is an area in which state regulators have been quite active.

NALC opposes discrimination in life and health insurance on the basis of race, color, religion or national origin, and we do not believe our members practice such discrimination. Discrimination of this type is prohibited by the Unfair Trade Practices Acts and Regulations that have been adopted in all states. Thus, the provisions in S. 2204 relating to these forms of discrimination clearly are unnecessary because these areas already are covered by state regulations.

Discriminating unfairly on the basis of sex likewise has been the subject of state regulatory action. Many states have enacted Unfair Sex Discrimination Acts or Regulations which prohibit discrimination against men or women with respect to conditions, benefits or availability of policies. NALC believes that if any unfairness still exists in this area, states should address such problems with appropriate legislation. However, we think that some of the perceived problems, particularly the alleged unavailability of disability insurance for women who are part-time workers, have been overstated. A number of companies now offer such disability coverage. We expect more to do so as the market expands—in the past, there simply has been no great demand for such coverage for men or women so companies often did not offer these policies.

Rate distinctions on the basis of sex also have been carefully examined by the states, and, for the reasons noted earlier, state authorities generally sanction, and in some cases apparently may even require sex-based classification to ensure equitable rates based on sound cost projections. State officials recognize that this rating factor is fair, justifiable and indeed essential for many types of coverages. Congress should not preempt state officials' judgment in this area.

ADDITIONAL PROBLEMS WITH S. 2204

In addition to NALC's central objection to S. 2204's prohibition on the essential industry practice of utilizing sex for risk classification purposes, this bill contains other unfair and burdensome provisions.

For example, the 90-day implementation provision would impose high costs and substantial burdens on insurance companies. Many smaller companies simply could not revise premium or benefit rates and make the other necessary changes in this short time frame. Most smaller companies do not employ their own actuaries. Instead, they must rely on consulting actuaries who perform services on a contract basis. It would be impossible for many small companies to obtain the necessary outside help that would be required to adjust premiums and benefits on existing and current products and put these changes into effect within 90 days. Moreover, as noted earlier, actuaries tell us they can not now accurately make projections without relying on sex for rating purposes.

CONCLUSION

In summary, NALC believes that:

Life and health insurance rates must be set equitably to reflect costs on the basis of actuarially sound mortality and morbidity projections;

Sex is a fair and essential factor which must be considered in reliably projecting mortality and morbidity;

Prohibiting the use of sex as a distinguishing factor in setting life and health insurance premiums would result in unfair rates for women and for men, and could cause insurers to incur serious underwriting losses since rates might not be based on costs;

Smaller life and health insurers would be disproportionately affected by the new costs and burdens of this legislation, particularly its costly retroactive requirements and early implementation provision; and

Prohibitions in this bill against discrimination on the basis of race, color, religion or national origin are unnecessary because state laws already prohibit such discrimination and NALC does not believe that life and health insurers engage in such practices.

Therefore, NALC strongly opposes S. 2204. We urge this Committee to reject this counterproductive legislation.

STATEMENT OF WILLIAM C. SCOTT, JR., SENIOR VICE PRESIDENT, PERSONAL LINES
COMMERCIAL UNION ASSURANCE CO.

In 1977, Commercial Union decided it was time to take a fresh approach to solving some of the problems facing the auto insurance industry. Of particular concern to us was the growing displeasure of insureds, regulators, and legislators at the high cost of auto insurance. I am speaking not only of conditions in our home state of Massachusetts, but of a nationwide situation.

My presentation today will bring to your attention some first steps Commercial Union has taken toward the solution of the exceptionally complex problem of making auto insurance affordable for the nation's drivers. We all recognize that the solution to this problem cannot be accomplished by insurance company managements alone. The regulators must help create the conditions that make it possible for the companies to provide coverage that is realistically priced to the responsible driving public. In providing such coverage, we are concerned that the operation of our business stays within the private sector and within a competitive environment.

I have used the word complex in describing the problem. There is obviously not time to identify and analyze all the factors that contribute to the complexity, but I do want you to know we are concerned about the present trend among regulators and legislators to attempt to apply simplistic solutions to complicated problems.

At Commercial Union, we believe we have taken steps toward a solution that addresses some of the causes of the affordability problem. First—a program to reduce our company's dollar loss from fraud and dishonesty in the auto insurance claim system. Second—the funding of a landmark study on auto insurance regulation. Third—development of a risk classification plan we believe will result in more equitable premiums. In the limited time available, let me highlight these steps and how they address the affordability problem.

First—the anti-fraud effort. The dollar loss from fraud and dishonesty in CU's auto insurance claim system has been reduced in the last year as the result of a better coordinated system of claims procedures. These include more face-to-face ad-

justing, increased use of in-house adjusters, fraud detection training for our staff and the institution of special investigative units in two states. The first of these units, operating in Massachusetts, in less than 12 months saved the company—and policyholders—more than \$300,000. A second unit has been staffed in New York, and we plan eventually to establish units in other jurisdictions. It has been argued that fraud and dishonesty are not only a cause of high insurance premiums, but also a reaction to a system that creates unfairly high premiums. Commercial Union has long felt that those—including regulators—who can solve the affordability problem do not necessarily recognize or agree on the extent to which the regulatory environment in which we provide insurance contributes to the problem. That concern has given rise to our second important step.

Last September, Commercial Union announced that we are funding an independent study by SRI International, the California research organization formerly affiliated with Stanford University. The purpose of the study is to identify the fundamental requirements of a viable insurance system which will provide the vast majority of drivers with auto insurance coverage that is readily available and realistically priced. We expect that the study will furnish consumer groups, regulators, legislators and insurance company managements with important information on the degree to which actions to date have contributed to or alleviated the affordability problem. The title of the study is "A Fundamental Analysis of the Choice of Regulatory Environments for Auto Insurance." The findings will be made public shortly in language comprehensible to the insuring public. The study is both independent and impartial. Commercial Union's involvement in the research effort is restricted to financial sponsorship only, out of the conviction that an unbiased appraisal of the issues can best serve the public interest.

The study being conducted by SRI addresses the broad subject of state regulation of auto insurance and will reflect the regulatory policy agenda facing many state regulators, legislators, insurers and consumers. The emphasis throughout the study will be on fundamental principles and data. SRI's task is to clarify the issues—provide an appraisal—and develop recommendations with respect to the choice among regulatory environments for private passenger auto insurance, and of societal values as they relate to these choices.

Commercial Union's third step was the development of an incentive-oriented risk classification plan for private passenger auto insurance—with which many of you are already familiar. It has been filed in the states of Wisconsin, Virginia and Colorado and is available to drivers in those states through the independent agency marketing system. We developed this plan because we felt that improvement of the classification process could go a long way in addressing positively the problems of affordability countrywide. Corollary benefits to be derived are the reduction of the inequitable and inaccurate elements found in most rating plans today, as well as increased consumer understanding and acceptance of the method by which their insurance costs are determined.

As you will see, the class plan we have established goes much further than just eliminating age, sex and marital status from the rating structure. I mention this because I cannot emphasize too strongly that simply eliminating those factors as rate determinants is not enough. The problem of affordability is too complex to be solved by such a simple method.

It should be kept in mind that our research was into classification plans as they apply to every state, not just Massachusetts. The current Massachusetts classification was promulgated by Commissioner Stone in his December 28, 1977 decision on 1978 rates. As you will see, the class plan proposals we have developed go much further than just eliminating age, sex and marital status from the rating structure, which is essentially what the Massachusetts commissioner did.

At the start of our research effort, we were hearing conflicting claims and arguments almost daily concerning the current classification and newly proposed systems. Both industry representatives and regulators were taking sides on this issue. Because of the confusion that such an environment can cause, the Commercial Union research team decided to approach the problem from a completely objective point of view. Suppressing our pre-conceived notions and biases concerning classification plans, we began research into the insurance literature, including well respected insurance textbooks, regulatory decisions, special studies and any other source of information we could locate.

Based on this research, we developed six criteria we felt would provide a good measure of the appropriateness of classification variables.

EXHIBIT 1

(Note: Exhibits are appended to this paper)

These six criteria are:

1. *Causality*.—by causality we mean that there exists a direct cause and effect relationship between the characteristic measured by a classification variable and the probability of a loss. To illustrate the point, it is intuitively obvious and statistically verified that a person who has had accidents in the past is more likely to have accidents in the future than the driver with a clean record. Therefore, the cause and effect relationship exists.

2. *Homogeneity*.—means that a grouping of insureds is made up of drivers with similar probabilities of loss. homogeneity, therefore, would ensure that each insured is charged a premium which directly relates to his expected losses.

3. *Incentive value*.—of a classification refers to the degree to which an insured is encouraged to take affirmative steps to improve his driving characteristics. The incentive value is dependent upon an insured's ability to control the characteristic which is measured in the rating structure. For example, if an insured knows that moving traffic violations will have an adverse effect on his insurance costs, he may become a better driver by avoiding such violations. A person's sex, on the other hand, is not controllable and so provides no incentive value.

4. *Social acceptability*.—is a very difficult concept to define. Basically, it refers to the perception of the insured as to whether or not he is being treated fairly. The list of socially acceptable variables is constantly changing. For example, in the past, age and sex were not challenged as being inappropriate for use in a class plan but today, they are becoming increasingly unacceptable.

5. *Practicality*.—it is important that a rating variable proposed for use in rating is easily implemented and that such implementation is cost-effective. We do not want to use such complicated rating procedures so that any benefit to the insured will be wasted in increased costs.

6. *Ability to verify*.—it is also important to be able to obtain the type of information needed to rate under a class plan. The rating information should be free from easy manipulation by insured, agent or underwriter.

With the six criteria outlined above, we set out to evaluate all possible rating variables. On the basis of this evaluation, we felt that the following ten variables deserved a closer look with whatever data we could find.

EXHIBIT 2

A. Driver characteristics

- (1) Driving experience—(number of years licensed).
- (2) Driving record—(an insured accident and conviction record).
- (3) Claims history—(claims experience with our company).
- (4) Driver training—(currently used).

B. Automobile characteristics

- (1) Make and model.
- (2) Model year.
- (3) Cost new.

C. Use of automobile

- (1) Type of driving—(pleasure, commute, business, etc.).
- (2) Territory—(including a measure of traffic density).
- (3) Miles driven.

It was necessary to go outside of our company to obtain data that would either confirm or deny the validity of the above variables.

EXHIBIT 3

The first half of this slide shows pure premium relativities, based on Allstate statistics, for drivers who have been licensed for more than three years and drivers who have been licensed for fewer than three years. The numbers clearly show that the more experienced group produces much lower loss costs than their less experienced counterparts. The second half of the exhibit shows the relative accident frequencies based on Massachusetts registry data, for various age groups. The age groups were chosen to approximate groups of inexperienced and experienced drivers. The results clearly show that the under 20 group has four times as many fatal accidents than the population as a whole. For non-fatal and property damage acci-

dents, the frequency is 3.6 and 3.3 times greater than the average. This clearly indicates that driving experience is a valid indicator of a person's driving ability.

EXHIBIT 4

This slide shows the results of a North Carolina driver study that tracked drivers through four consecutive years. Driving records for the first two years of the period were compared to driving records in the following two years. It is clear that drivers with accidents in the first period are more likely to have accidents in the following two years than the clean drivers. The probability of a future accident is directly related to the occurrence of past accidents. Data from a California study on convictions shows similar results.

EXHIBIT 5

This slide shows data from eight major insurers published by the Highway Loss Data Institute (HLDI) by vehicle make and model. The makes and models shown on this slide are currently rated the same. This is because the current methodology uses cost new as the primary determinant of a vehicle's physical damage premium.

The HLDI data clearly shows that this procedure is no longer appropriate. For example, the Buick Skylark has a relative average loss per exposure of 53 and the Pontiac Firebird has a relative average loss per exposure of 204. This is almost a 4 to 1 difference in experience for vehicles that are currently rated for the same. We propose a rating procedure where this variation is taken into account.

EXHIBIT 6

HLDI also publishes loss statistics by model year. Currently, a vehicle's physical damage premium is reduced each year the car ages. The reduction is approximately 10 percent per year. The average loss payment per insured vehicle year for 1975 models shows that this procedure is no longer appropriate. It can be seen that the cost of insuring these vehicles in the first year of introduction is \$65. In the next year, the average cost is \$66—\$1 greater than the first year even though these vehicles were given a 10 percent cut in premium. The average cost remains constant for the third year also. The reason for the non-decreasing nature of the loss costs is that partial losses are becoming increasingly costly due to the inflation of repair part costs. Based on this information, we propose to rate physical damage coverages by model year and not by the current age group methodology.

EXHIBIT 7

This slide is based on data published by the U.S. Federal Highway Administration. The data shows the percentage of trips and travel made up by the various vehicle usages. We see that transportation to and from work makes up 32 percent of the total passenger car trips in the country. Based on this, we conclude that it is necessary to be able to isolate drivers by vehicle use and rate them accordingly.

EXHIBIT 8

Finally, this slide contains some very interesting information. The data shown is average annual miles driven broken down by age and sex. We see that the male group drives about twice as many miles as their female counterparts. This helps to explain why youthful males are more costly to insure than youthful females. Also, we notice a drop-off in miles driven as a person approaches age 65. Currently, a credit is given to drivers aged 65 and over. Rating by miles driven would go a long way towards replacing the accuracy lost with the elimination of rating by age and sex.

As a result of the above, the following variables make up what we feel to be a viable classification framework:

EXHIBIT 9

A. Driver characteristics

- (1) Driving experience.
- (2) Driving record.
- (3) Claims history.
- (4) Driver training.

B. Automobile characteristics

- (1) Make and model.
- (2) Model year.
- (3) Secondary rating factors.

C. Vehicle use

- (1) Territory.
- (2) Type of driving.
- (3) Annual mileage.

As I mentioned at the beginning, we feel that improving the classification procedures is only part of the answer. We must also work to control the size of the involuntary markets so that the strain they create on the voluntary insurance mechanism may be minimized. Hopefully, this class plan will help us to control the residual markets by providing a more accurate measure of each insured's exposure to loss.

This concludes my summary of the research findings which are the basis for the classification plan which has been filed in Virginia, Wisconsin, and Colorado. Our plans call for us to implement the plan in other states where the regulatory and legislative climates are favorable—and our target for this year is 20 states.

While it is still early in the game plan, our first two states' experience has been rewarding in that the risk distributions have been as generally expected.

We have learned also where there are gaps between theory and the real world in the marketplace. We are making adjustments as we go.

The conclusion I hope each of you has arrived at is that it's not enough to mandate that age, sex and marital status be retired as rating factors. And it's not enough to replace them with simplistic alternatives which may be socially acceptable, but create a whole new set of inaccuracies and inequities, as was done in Massachusetts. We at Commercial Union are opposed to the mandating of classification plans.

The problem, as I said earlier, is too complex to be resolved in such a manner. I have tried to illustrate that by reviewing the other steps Commercial Union is taking. Thank you.

Exhibit 1

CHARACTERISTICS OF A GOOD RATING CLASSIFICATION

1. Causality—including objectivity.
2. Homogeneity.
3. Incentive value—controllability by insureds is vital.
4. Social acceptability—including no unfair discrimination.
5. Practicality.
6. Ability to verify.

Exhibit 2

RATING VARIABLES WHICH MEET THE NECESSARY STANDARDS

A. DRIVER CHARACTERISTICS

1. Driving experience.
2. Driving record.
3. Claims history.
4. Driver training.

B. AUTOMOBILE CHARACTERISTICS

1. Make and model.
2. Model year.
3. Cost new.

C. USE OF AUTOMOBILE

1. Type of driving.
2. Territory—including traffic densities of areas of principal use.
3. Miles driven.

Exhibit 3

I. ALLSTATE STATISTICS—PURE PREMIUM RELATIVITIES

[Policy years 1972 and 1973]

Age group	More than 3 years	Less than 3 years
Adult.....	0.875	1.559
Youthful male.....	1.846	3.081
Youthful female.....	1.154	1.596
Total.....	1.000	1.000

II. MASSACHUSETTS REGISTRY DATA—RELATIVE ACCIDENT FREQUENCY

Age	Distribution	Fatal	Nonfatal	Property damage	Total
Under 20.....	0.090	4.210	3.628	3.320	3.420
20 to 24.....	.136	1.968	1.487	1.288	1.353
Over 24.....	.774	.457	.609	.680	.657
Total.....	1.000	1.000	1.600	1.000	1.000

Exhibit 4

	Accidents—second 2-year period							
	0		1		2		3	
	Number	percent	Number	Percent	Number	Percent	Number	Percent
Accidents—first 2-year period:								
0.....	2,922,577	89.6	206,778	9.3	22,080	1.0	2,639	0.1
1.....	192,684	82.0	35,363	15.1	5,842	2.5	986	0.1
2.....	20,467	73.5	5,694	20.5	1,369	4.9	300	1.1
3.....	2,546	63.3	1,008	25.1	384	9.6	81	2.0
4.....	321	56.3	162	28.4	73	12.8	14	2.5

Exhibit 5

HIGHWAY LOSS DATA INSTITUTE—RELATIVE AVERAGE LOSS PER EXPOSURE

[Current rating group—5]

Automobile make and model	Total exposure	Relative average loss per exposure	index to total group 5
	(1)	(2)	(3)
II. Compacts:			
Buick Skylark (4 door).....	4,105	53	0.553
Buick Skylark (2 door).....	5,005	66	.688
Pontiac Ventura (4 door).....	2,244	66	.688
Chevrolet Nova (4 door).....	11,075	67	.699
Oldsmobile Omega (4 door).....	2,338	77	.803
American Hornet (Station wagon).....	1,939	77	.803
Ford Maverick (4 door).....	2,883	81	.845
Dodge Aspen (2 door).....	4,070	82	.855

HIGHWAY LOSS DATA INSTITUTE—RELATIVE AVERAGE LOSS PER EXPOSURE—Continued

[Current rating group—5]

Automobile make and model	Total exposure	Relative average loss per exposure	Index to total group ⁵
	(1)	(2)	(3)
Oldsmobile Omega (2 door)	2,486	82	.855
Ford Granada (4 door)	10,549	84	.876
Pontiac Ventura (2 door)	2,620	85	.886
Chevrolet Nova (2 door)	13,037	85	.886
Plymouth Volare (2 door)	4,935	88	.918
Mercury Monarch (2 door)	3,004	89	.928
Ford Maverick (2 door)	2,359	91	.949
Mercury Monarch (4 door)	3,049	93	.970
Ford Granada (2 door)	12,871	93	.970
Chevrolet Camaro	16,626	137	1.429
Pontiac Firebird	10,495	204	2.127
Compact total	115,690		1.043

Exhibit 6

TABLE 1.— LOSS PAYMENT SUMMARY BY CAR SIZE, MODEL YEAR, AND YEARS SINCE INTRODUCTION 1975, 1976 AND 1977 MODELS—COLLISION COVERAGES¹

Car size and years since introduction	Claim frequency per 100 insured vehicle years			Average loss payment per claim			Average loss payment per insured vehicle year		1977 models
	1975 models	1976 models	1977 models	1975 models	1976 models	1977 models	1975 models	1976 models	
All combined:									
First	10.4	10.3	9.8	\$628	\$668	\$741	\$65	\$69	\$73
Second	10.4	10.0		637	675		66	68	
Third	9.4			666			63		
Subcompact: ²									
First	10.6	10.5	10.4	745	727	829	79	76	86
Second	10.9	10.4		715	735		78	76	
Third	9.8			734			72		
Compact: ³									
First	9.9	10.2	9.9	615	659	717	61	67	71
Second	9.9	9.8		635	669		63	66	
Third	9.1			661			60		
Intermediate: ⁴									
First	10.6	10.2	9.4	605	663	722	64	68	68
Second	10.5	9.9		612	667		64	66	
Third	9.3			646			59		
Full size: ⁵									
First	10.2	9.6	10.2	588	623	753	60	60	77
Second	10.0	9.4		592	631		59	59	
Third	9.2			628			58		

¹ Results are standardized to the exposure distribution:

	Percent
Deductible (\$50):	
Youthful operator	5
No youthful operator	35
Deductible (\$100):	
Youthful operator	15
No youthful operator	45

² Wheelbase less than or equal to 101 inches.³ Wheelbase greater than 101 and less than or equal to 111 inches.⁴ Wheelbase greater than 111 and less than or equal to 120 inches.⁵ Wheelbase greater than 120 inches.

Exhibit 7

PASSENGER CAR USE

	Percentage distribution (percent)		Average trip length one-way (miles)	Average occupants per car
	Trips	Travel		
Earning a living:				
To and from work.....	31.9	33.7	9.4	1.4
Business related to work.....	4.3	7.9	16.1	1.6
Total.....	36.2	41.6	10.2	1.4
Family business:				
Medical and dental.....	1.8	1.6	8.4	2.1
Shopping.....	15.2	7.5	4.4	2.0
Other.....	14.0	10.2	6.5	1.9
Total.....	31.0	19.3	5.6	2.0
Educational, civic or religious.....	9.3	4.9	4.7	2.5
Social and recreational:				
Vacations.....	0.1	2.5	160.0	3.4
Visit friends or relatives.....	8.9	12.1	12.0	2.2
Pleasure rides.....	1.4	3.1	20.0	2.7
Other.....	12.0	15.3	11.4	2.6
Total.....	22.4	33.0	13.1	2.5
All purposes.....	100.0	100.0	8.9	1.9

Source: U.S. Federal Highway Administration, "Nationwide Personal Study Reports No. 1 and 7."

Exhibit 8

AVERAGE ANNUAL MILES DRIVEN

Age	Male	Female	All
16 to 19.....	5,461	3,586	4,633
20 to 24.....	11,425	5,322	8,260
25 to 29.....	13,931	5,539	9,814
30 to 34.....	14,496	5,752	10,274
35 to 39.....	13,035	6,232	9,978
40 to 44.....	13,133	5,950	9,833
45 to 49.....	12,818	6,271	9,875
50 to 54.....	12,345	5,454	9,447
55 to 59.....	11,495	5,439	9,009
60 to 64.....	9,710	5,291	8,112
65 to 69.....	5,915	4,173	5,850
70 and over.....	5,302	3,183	4,644
All ages.....	11,352	5,411	8,685

Source: Based on unpublished data from National Personal Transportation Survey conducted by Bureau of the Census for the Federal Highway Administration.

Exhibit 9

RECOMMENDATIONS

A. DRIVER CHARACTERISTICS

1. Driving experience.
2. Driving record.
3. Claims history.

4. Driver training.

B. AUTOMOBILE CHARACTERISTICS

1. Make and model.
2. Model year.
3. Secondary rating factors.

C. VEHICLE USE

1. Territories.
2. Type of driving.
3. Annual milage.

BLUE CROSS ASSOCIATION—BLUE SHIELD ASSOCIATION,
Washington, D.C., August 11, 1982.

Hon. ROBERT PACKWOOD,
Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: We appreciate this opportunity to comment on S. 2204, the proposed Fair Insurance Practices Act, on which your committee held hearings on July 15, 1982.

The bill's broad purpose is to prohibit discrimination based on race, color, religion, sex, or national origin in the writing and selling of insurance contracts. Blue Cross and Blue Shield Plans do not consider the race, color, religion or national origin of individuals or groups in setting premiums for our health care benefits. In some cases, however, the sex of an individual or the number of males and females in a group seeking coverage are taken into consideration in calculating the premium needed to balance the cost of benefits we anticipate will be paid. Prohibiting this actuarial practice would pose significant problems for Blue Cross and Blue Shield Plans in their attempt to set reasonable and equitable rates and pursue underwriting practices that promote sound financing and the widest possible availability of health insurance.

The nation's non-profit Blue Cross and Blue Shield Plans, from their beginnings, have operated with a strong sense of community service. But we pursue our community service objectives in a highly cost-conscious private market where the participating competitors assume a variety of forms and compete for business through a variety of strategies, including continual refinement of rating and underwriting practices. Historically, Blue Cross and Blue Shield underwriting guidelines have differed in certain respects from commercial underwriting standards. Our underwriting policies often reflect the community service motivations of Plans. Our history of community rating is evident in underwriting practices that tend to be less restrictive than those of commercial insurance companies.

As you know, health insurance premiums are developed by highly trained actuaries. They employ complex calculations and reliable statistical data to determine the risk involved in providing a specific set of insurance benefits to a person or group of persons. Based upon past experience with similar individuals or groups and certain assumptions about future costs, actuaries calculate the premium needed to offset the risk being assumed by the insurer.

It would be much beyond the scope of this letter to describe in detail how insurers arrive at rating standards and manage risk, but it is sufficient to say that risk classification and ratemaking are fundamental to the business of insurance and are the foundation upon which the insurance system is built.

In determining the risk an individual represents to an insurer, it may be relevant to consider that person's age, sex, type of employment, and general area of residence. In providing health insurance to groups, the differences between individuals tend to average out; because most large insured groups are experience rated, i.e., their premiums are based largely on their utilization of benefits during the previous contract period. The characteristics of the individual making up the group are usually taken into account only in setting the premium for the first year. In underwriting smaller groups and individuals, however, actuaries often pay closer attention to characteristics such as age and sex which many years of accumulated, reliable statistical evidence show to be valid predictors of risks. In using these factors there is absolutely no intent to discriminate against or in favor of classes of individuals, but rather to construct equitable rates which reflect the potential losses from the risk being assumed by the insurer.

Failing to take relative risk into account, or operating under circumstances that make it impossible to accurately assess that risk, leads to undesirable consequences

for both insurer and insured. In extreme cases, it may result in insurer insolvency. More often, it exposes an insurer to adverse selection—a condition which can lead to withdrawal from a particular line of business.

Simply stated, insurance rates are nothing more than the price a consumer pays for the product. Just as manufacturers of goods must price their products to reflect the costs of production, so must insurers price their products in a way that reflects the insurer's equivalent production costs. For insurers, the chief cost is benefits paid out, or "loss." We cannot put a fair price on an insurance product unless we determine as closely as possible what we expect our losses to be. An insurer which fails to include in its product's price an accurate measure of what it will have to pay to satisfy claims is simply not pricing its product rationally or equitably.

Over the years, gender has consistently proved to be a reliable indicator of differences in costs, and for that reason, insurers in some of their lines have taken it into account in projection probable losses and figuring rates. There are demonstrable and significant differences in costs for males and females in many insurance areas. With respect to pensions (annuities), females live longer than males on the average, and thus receive payments for longer periods. A lifetime annuity for a female beginning at age 65 will cost more than the same annuity for a male age 65. For the same reason, life insurance costs less for females than for males. Automobile accident insurance statistics indicate that males under age 30 incur greater accidental costs than females under age 30, giving rise to a need for greater premiums for males under age 30 than for females under age 30. In health insurance, the accumulated data show that female costs are higher than those of males up until around age 55; beyond that age, females health costs tend to be less than for males.

When insurers are permitted to vary the price of benefits offered to purchasers on the basis of a reasonable cost classification system, the result is greater market stability. On the other hand, if insurers are not allowed to classify risks appropriately and if the premiums determined based on a restricted classification system are inadequate, insurers may find it necessary to avoid the acceptance of any transfer of risk from certain market segments. This would be disruptive to the market and could cause such discriminatory realignments as preferred buyer strategies, the formation of specialty insurance companies, or withdrawal of some insurers from the market altogether. In any of these cases, the availability of insurance would be jeopardized.

Finally, Mr. Chairman, I would like to reiterate that the classification of risk based upon gender is a consideration in setting dependable rates for an important percentage of our Blue Cross and Blue Shield Plans' business. If it is true—as the proponents of S. 2204 assert—that the cost and utilization differences between men and women with respect to health insurance are narrowing, then I can assure you that it will not be long before that change is reflected in the premiums set in the highly cost-competitive health insurance market. But in the meantime, it is accurate to say that in some instances, women's costs are greater; and in some instances, women's costs are less. Price differentiation where such differences are statistically demonstrable is not of itself unfairly discriminatory, but, rather, represents the expected average that individuals or groups purchasing insurance should pay for transferring their risk to the insurer.

Sincerely,

STANLEY B. JONES,
Vice President.

SEX DISCRIMINATION IN AUTOMOBILE INSURANCE: AN ANALYSIS OF THE DATA

New Jersey automobile insurance is currently priced according to a rate classification system.¹ The plan presently used by the majority of insurers has 217 classes and by combining the factors of sex, age, marital status, use of car and place of residence there can be as many as 234,360 different rates for identical coverages.² The driver's sex is a major factor in determining an individual's insurance rate, especially for persons under thirty years of age.³ Automobile insurance focuses on the insured car as the unit of analysis.⁴ That is, insurance is purchased for a vehicle, not a person. The classification plan determines how an insured's car insurance is priced.

The theory behind the present automobile insurance classification system is that each motorist pays a premium reflecting her or his potential or expected loss (expected loss = risk of claim × cost of damages).⁵ Every individual must be charged a premium commensurate with their exposure to loss; an equal premium should be

Footnotes at end of article.

charged to all persons with essentially the same risk exposure.⁶ For insurers to price their product equitably a classification scheme which is the grouping of similar risks is needed.⁷ Therefore, the insurer's goal should be to make each class as homogeneous as possible to avoid the inequities of large pricing errors. That is, to avoid large deviations between the mean expected loss within the group and the individual's expected loss.^{8,9} (See figure 1.) The classification plan's ultimate goal is to avoid cross subsidies between groups and to assure that each group of insureds pays its "fair share."¹⁰

Sex and other demographic rating variables are a phenomenon of the last thirty years.¹¹ Prior to 1950, the only classification variables used were driving record, usage and the presence of operators under twenty-five years of age.¹² In the early fifties new entrants into the insurance market, known as direct writers, targeted specific segments of the market.¹³ By using sex and other demographic variables, in addition to the few driving record and usage classifications already in existence, the direct writers were able to secure a foothold in the marketplace by their ability to offer lower premiums to selected groups of drivers.¹⁴ In order to remain competitive the traditional or stock insurance companies began to utilize the status-class rating factors.¹⁵ A letter was sent to the rating committee's members asking for ideas on rating factors. The ideas were summarized and the committee then met to discuss what would be good criteria. The utilization of sex based classifications according to Philip Stern, former chief actuary of the insurance department, who participated as an industry actuary in the formulation of the first classification plans arose out of a statement by a motor vehicle commissioner in 1949 and preconceived stereotypes that young drivers, in particular young males had a higher number of accidents than other groups of drivers. The motor vehicle commissioner's state then issued a show cause order to the rating bureaus to show why there should not be higher rates for youthful males. The bureaus promptly introduced a separate class of males under twenty-five.^{16,17} Males were rated as a separate class so others could enjoy lower insurance rates.¹⁸ At the time it was thought that females did not drive as much.¹⁹

The present categories were established largely by guesswork,²⁰ and the result of trial and error rather than systematic research and analysis.²¹ Certain classification variables were used because of competitive pressures²² and management decisions.²³ The process of risk classification used in New Jersey has not been precisely mirrored in any jurisdiction in the United States nor has it seen a rough parallel outside the United States. In Japan little price differentiation exists; everyone pays the same price.²⁴ Most European nations have similarly unrefined pricing schedules. Their laws dictate that all persons be offered insurance.²⁵ Premiums vary only with geography, vehicle type and driving experience.²⁶

1. IS THERE A DIFFERENCE IN DRIVER PERFORMANCE BETWEEN MALES AND FEMALES?

Sex has been accepted in the insurance industry as a good indicator of loss likelihood for youthful drivers.²⁷ Though, there is no direct causal relationship between sex and accident propensity,²⁸ there is a correlation between sex and accident propensity. Sex is utilized as a proxy or indirect measure of other more direct variables such as mileage and maturity. Insurance industry representatives assert that sex as a rating factor is not only a practical method of distributing costs among insureds, but is also justifiable and equitable.²⁹ "These factors," they claim, "are clearly based upon statistically supported data." The Commission's staff examined the accident involvement data in order to determine whether the data supported the current classifications. Two recent studies submitted to Congress by the Alliance of American Insurers, a trade organization,³⁰ purportedly showed that male drivers had more accidents, and that those accidents were more expensive than those involving females.³¹ The first study showed males under age twenty-five to have an average loss of \$307.46 per car compared to an average per car loss of \$193.92 for females under age twenty-five.³² However, when mileage differences are accounted for, females had many more accidents per mile and were 50 percent more expensive to insure on a per mile basis.³³

The second study, which was conducted by the California Insurance Department, also proved that on a mileage adjusted basis in most age groups females had more accidents than males.³⁴ This industry submitted data showed that male drives had 55 accidents per hundred drivers while females had 29 accidents per hundred drivers at age 21.³⁵ However, when mileage was adjusted, the data showed that females at age 21 had 25 percent more accidents per mile. Utilizing cost data submitted by the industry in the first study, females at age 21 are 3.2 percent more expensive to

insure per mile.³⁶ In all ages, females had 57 percent more accidents per mile³⁷ and were 30 percent more expensive to insure on a per mile basis.³⁸

The staff's analysis contradicts the insurance industry's claims that males are more dangerous or accident prone—indeed the opposite may be true—males appear to be involved in less accidents per mile, and less expensive to insure on a per vehicle mile basis.

The difference between males and females that exists on a per vehicle mile basis is a function of the decreasing rate of accidents per additional mile as total driver mileage increases.³⁹ Accident propensity differences between males and females is less than 5 percent when adjusted for accident propensity by annual driver mileage.⁴⁰ (See Tables 1 and 2.)

When factors other than sex are taken into account, it appears that the driver's sex has little or no impact on driving performance. With relatively simple adjustments for mileage and age the accident differential between males and females had been reduced to less than 5 percent. A more sophisticated analysis utilizing additional factors, such as used differentials, vehicle differentials and interaction effects between the variables would account for differences between males and females even further.

Mileage alone is able to explain more of the variation in accident data than is sex.

II. IS CLASSIFICATION BY SEX EQUITABLE AND ACCURATE?

Sex and marital status classifications are responsible for today's large price differences. In the state of New Jersey, assignment to the secondary market may in fact be determined by one's gender. The Commission questioned whether sex is an accurate predictor or merely an anachronism.

The criteria used to evaluate a classification scheme are homogeneity (within class variation), separation (practically and statistically significantly different), reliability, incentive value and social acceptability.⁴¹

Homogeneity refers to differences among members of an individual class.⁴² The expected loss for each member of the group should fall as close as possible to the mean expected loss.⁴³ (See Figure 2.) Under current practices the expected loss of the classified group, is imputed to each person within the group; and actuarial analysis stops there.⁴⁴ The statutory standard, however, concerns fairness to individuals and not groups.⁴⁵ There is disagreement over how to measure homogeneity.⁴⁶ Homogeneity is important because as the group is subdivided into classifications, the pricing errors tend to become more severe, due to the smaller base. (See Figure 3. and Table 3)

In New Jersey, the classification system has been unable to produce homogeneous groups. Even the highest rated male and female classes are heterogeneous.⁴⁷ One would normally expect these classes to be the most homogeneous.⁴⁸ Figure 4 indicates graphically the homogeneity/heterogeneity that the overwhelming weight of the evidence suggests.⁴⁹ Since each of the distributions is skewed to the right, more than 50 percent of the insureds in each class are estimated to have expected losses below their class average. In Newark, for example, this results in 46 percent of the highest rated males being overcharged by more than \$500 and 51.6 percent being overcharged by more than \$300. Less than 3 percent of this class is being properly priced.⁵⁰ In Newark, 33 percent of the highest rated females are being overcharged by more than \$500 and 44 percent are being overcharged by more than \$300.⁵¹ The drivers within each classification are not homogeneous; substantial homogeneity requires k values⁵² many times larger than those found in the ISO estimates for Newark and New Jersey.⁵³ Because all persons within each classification do not have the same expected losses, some members, in some cases more than 90 percent, are subsidizing other members within and without the group, beyond the cost sharing principle upon which the insurance concept is based.

The concept of actuarial fairness requires that insureds grouped into classes to reflect essential differences in their expected losses and expected risk be rated accordingly.⁵⁴ Failure to properly classify drivers results in some persons being charged substantially more than is statistically justified by their risk of loss.⁵⁵ Those paying more than is justified by their expected loss are subsidizing those with a higher risk of loss.

Segregating drivers on the basis of gender does not increase the homogeneity of the classification system—the most heterogeneous classes currently are composed of young males and females segregated by gender.^{56,57} The heterogeneity present in these classification groups disproves the industry's claims that classification by gender is both accurate and necessary.

The explanatory power of the entire classification system is very weak. The 217 different rate classifications were unable to account for 87 percent of the variation in losses.⁵⁸ That is, at most, only 23 percent of the variation in systematic risk in the insured population as a whole was explained by the entire classification system. Classifications based on sex distinctions, exclusive of females 30 through 64, are able to explain 1 percent or less of the total variation in risk among all insureds.⁵⁹ When only youths are considered, the gender factor explains from less than 1 percent to 4 percent, depending on coverage and computational assumptions.⁶⁰

Sex in contrast to industry claims has very little explanatory power and does not create homogeneous groups. Sex is not an accurate predictor of accident risk. Sex is able to explain less than 5 percent of the total variation in risk and yet is responsible for rate differentials of many times greater magnitude. This results in large overcharges to many of the state's drivers. (See Table 4) It can be concluded that the use of sex as a factor violates the principle of actuarial fairness and should not be used. Gender based grouping does not reflect essential differences and results in large subsidies. Sex is not an accurate predictor of driving performance.

III. SEX DISCRIMINATION IN PRICING ALLOCATIONS

The cost allocation systems used by the insurance industry tend to discriminate against persons in high rate classifications, young males. Traditionally, the allowance for an insurer's expenses of doing business has varied in direct proportion to the premium rate.⁶¹ Some of the expenses do vary with the premium (to the extent that the premium is priced correctly) such as claims settlement administration. Other costs such as executive compensation do not vary with policy costs. To the extent that the costs do not vary, young males will be unfairly discriminated against by having to subsidize the policies of other insureds. The amount paid by members of the highest rate class for company expenses can often times exceed the total premium paid by persons in lower rated classes.⁶² This system of cost allocation was developed fifty years ago, at least in part because of date manipulation limitations.⁶³ Technological limitations no longer dictate, and elemental notions of fairness can no longer tolerate a pricing system that charges much higher expense amounts to some policyholders on the basis of assumptions, tradition and administrative convenience.

The second and perhaps more important pricing allocation issue is the utilization of a multiplicative or additive pricing formula. Under traditional pricing the territorial cost ratios and driver class ratios are multiplied to compute the final price.⁶⁴

Because of the rapidly increasing cost of insurance this method of pricing has come under attack, due to the large price differentials. This methodology tends to systematically overcharge the highest rated drivers, young males. Premiums of the magnitude that young males must pay would be a problem in any event, but are unconscionable when they result in part from a rating system that systematically overcharges them.

An alternative model called the additive least squares mode has been proposed.⁶⁵ The maximum overcharges with this model are less, but more importantly they are not coalesced in the highest rated classes.⁶⁶ Statistically, the additive model is more accurate.

Given the availability of a more accurate and more equitable estimating method, the use of the multiplicative model is discriminatory towards those persons in the highest rated classifications. The multiplicative model forces one group of insureds to subsidize the cost of insurance of another, discriminating against those who can least afford insurance.

IV. CONSTITUTIONAL CONSIDERATIONS⁶⁷

Gender discrimination is rapidly being recognized as no less invidious than discrimination by race or national origin. In *Frontiero v. Richardson* 411 U.S. 677, 686 (1973) the Supreme Court stated that "since sex, like race and national origin, is an immutable characteristic determined solely by accident of birth, the imposition of special disabilities upon the members of a particular sex would seem to violate the basic concept of a system that legal burdens should bear some relationship to individual responsibility." Administrative convenience cannot justify differential treatment based on invidious gender stereotypes. The Supreme Court has rejected administrative convenience as a sufficiently important objective to justify gender based classifications.

In *Craig v. Boren*, 429 U.S. 190 (1976) 18 through 20 year old men were prohibited from purchasing beer, while females were not, because statistics revealed that males in that age group had greater accident and arrest records for driving while intoxi-

cated. The Supreme Court stated that statistics showing a 10 to 1 ratio of male to female drunk drivers was insufficient "to form the basis for employment of a gender line, as a classifying device." If maleness is to serve as a proxy for drinking and driving, a 2 percent involvement rate must be considered unduly tenuous. "[P]rior cases have consistently rejected the use of sex as a decision making factor even though the statutes in question certainly rested on far more predictive empirical relationships than this," Craig at 202.⁶⁸ The driving performance statistics, in the Court's view, could not support the conclusion that the gender based distinction closely enough serves to achieve the objective and therefore the distinction cannot under past decisions withstand equal protection challenges.

Less than 6 percent of all males and 4 percent of all female drivers will have an accident in a given year.⁶⁹ For the youth categories, in no age group do females exceed 7 percent and for males the average is 9 percent.⁷⁰ Because more than 90 percent of either males or females will not be involved in an accident during a given year, the usual length of a contract for insurance, gender is an inaccurate proxy for other, more germane bases of classification. In light of the weak relationship between gender and accident involvement, gender classification schemes in automobile insurance are unable to meet equal protection standards. "In sum, the principles embodied in the Equal Protection Clause are not to be rendered inapplicable by statistically measured but loose fitting generalities concerning the . . . tendencies of aggregate groups." Fairness to individuals takes precedence over fairness to classes, *City of Los Angeles v. Manhart* 435 U.S. 702 (1978).

V. PUBLIC PERCEPTIONS OF INSURANCE RATES

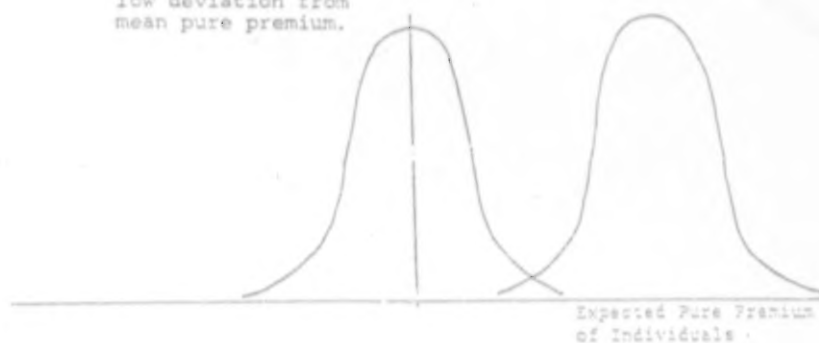
In a 1979 study by Aetna Insurance company found that 58 percent of the population felt that there was a difference in accident likelihood between males and females and 57 percent felt that marital status impacted upon accident likelihood.

This same study found that 65 percent of the public believe to varying degrees that sex should not influence a person's automobile insurance premium and 60 percent felt that marital status should not influence automobile insurance premiums. 88 percent of the population surveyed however felt that a driver's accidents and traffic violations should have an influence over the insurance premiums.

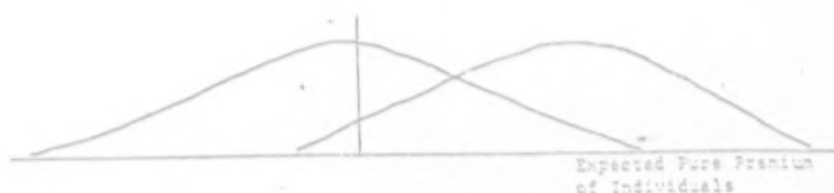
Figure 1.

Comparison of Variance Between
Homogeneous and Heterogeneous Classes

Case 1: Low Variance and
High Homogeneity
low deviation from
mean pure premium.



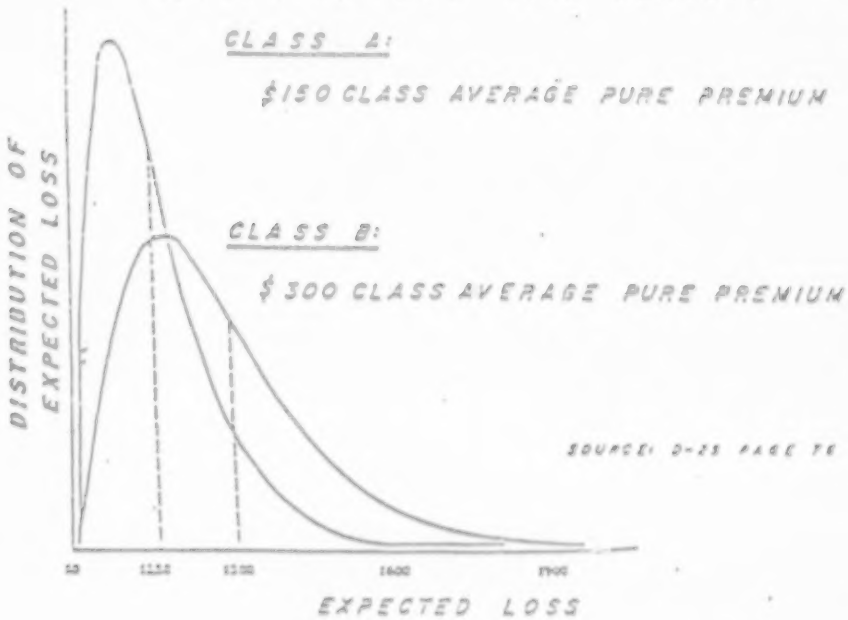
Case 2: High Variance and
Low Homogeneity
high deviation from
mean pure premium.



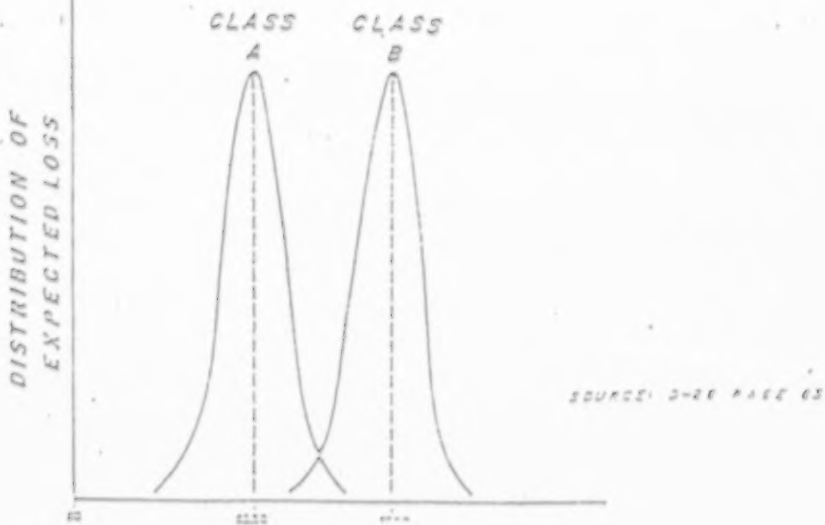
the expected loss of each individual group member should ideally fall as close as possible to the mean expected loss of the class as a whole. In the previous example, if the mean expected loss of a class is \$100, we would hope to avoid placing in that class individuals with expected losses of \$50 or \$1,000.

FIGURE 2

HETEROGENEOUS RISK CLASSES



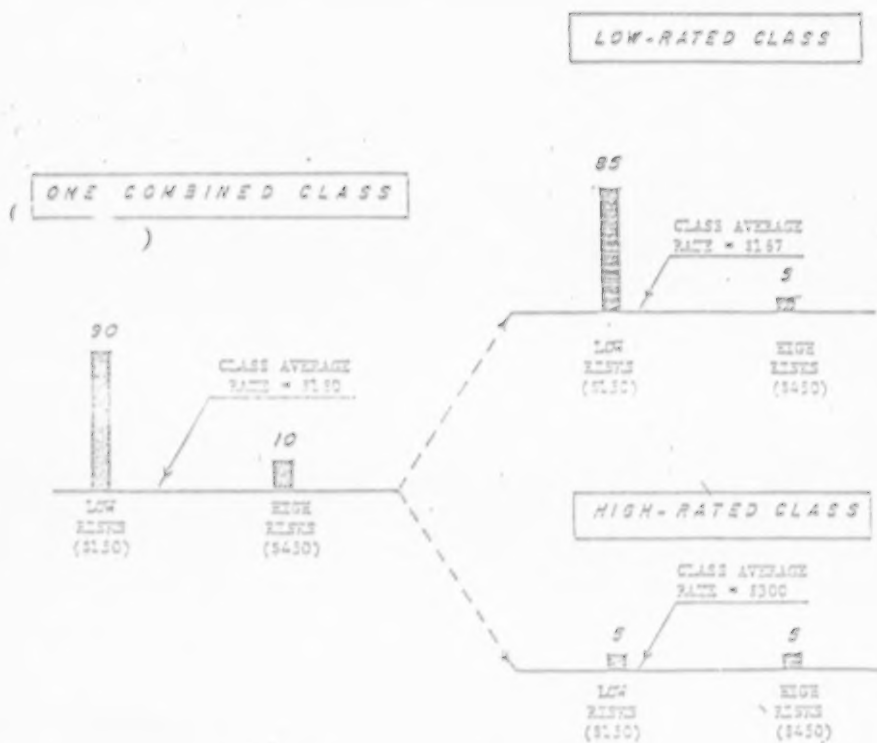
HOMOGENEOUS RISK CLASSES



FIG

THE IMPACT OF CLASSIFICATION REFINEMENT ON THE
DISTRIBUTION OF PRICING ERRORS:

TWO-CLASS HYPOTHETICAL



200022, 2-22

FIGURE 4

Full - Cover price:

COUNTY, 1948-1950

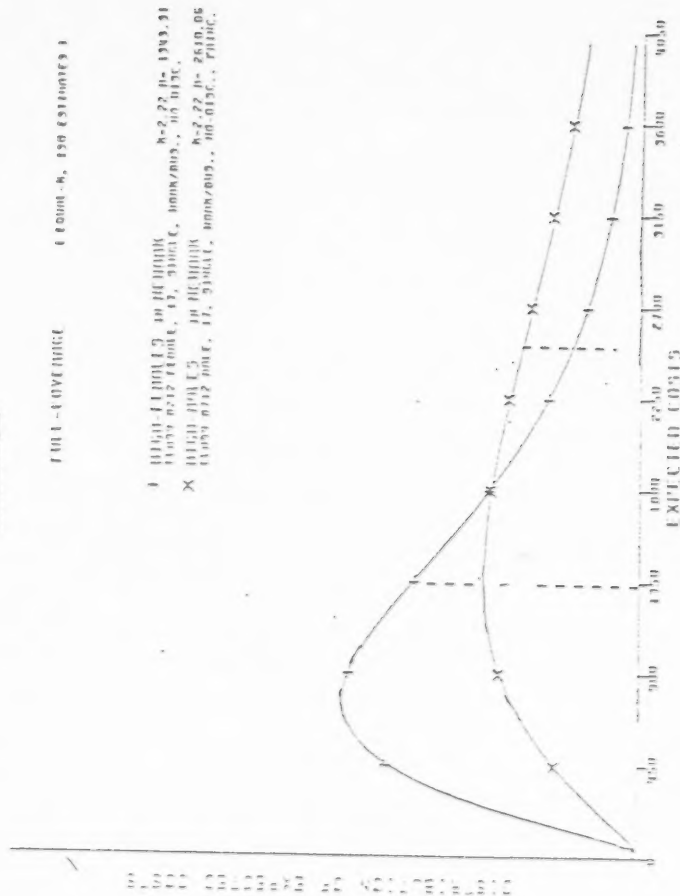


Table 1.—ACCIDENT FREQUENCY BY ANNUAL MILEAGE

[One Year Driver Record]

Annual mileage	Average annual mileage	Average accidents	
		Per driver	Per 100,000 miles
1-2,250.....	2,000	.042	2.083
2,251-4,250.....	3,250	.058	1.836
4,251-6,250.....	5,250	.070	1.327
6,251-9,250.....	7,750	.081	1.041
9,251-12,750.....	11,000	.102	.924
12,751-16,250.....	14,500	.116	.802
16,251-26,250.....	21,250	.124	.585
26,251-49,750.....	38,000	.133	.350
49,751-99,999.....	75,000	.180	.240
100,000 + ...	¹ 125,000	.232	.186

¹ Selected.

Source: California Driver Fact Book, revised July, 1976; derived from table 14.

Table 2.—ACCIDENT FREQUENCY FOR TEENAGERS

[One Year Driver Record]

Age at beginning of study	Average accidents per 100,000 miles	Average annual mileage
16 years, 3-5 months.....	3.00	4,637
16 years, 0-2 months.....	3.46	4,668
16 years, 6-8 months.....	2.07	5,571
16 years, 9-11 months.....	2.35	6,178
17 years, 0-2 months.....	2.25	6,629
17 years, 6-8 months.....	2.10	7,156
17 years, 3-5 months.....	1.77	7,159
18 years, 0-2 months.....	1.79	8,160
17 years, 9-11 months.....	1.68	8,327
19 years, 0-2 months.....	1.63	8,910
18 years, 9-11 months.....	1.39	8,991
18 years, 6-8 months.....	1.17	9,027
18 years, 4-5 months.....	1.32	9,107
19 years, 3-5 months.....	1.31	9,127

Source: "The Teen-Aged Driver," February, 1965; derived from table 6.

Table 3.—Non-classified plan:

90 persons with \$150 expected loss.

10 persons with \$450 expected loss.

Class average equals \$180.

Total overcharges \$2,700.

Average overcharge \$30.

Maximum overcharge \$30.

CLASSIFIED PLAN

	High	Low
Persons with \$150 expected loss.....	5	85
Persons with \$450 expected loss.....	5	5
Total overcharge equals \$2,195.....	750	1,445
Average overcharge equals \$24.....	150	17
Maximum overcharge equals \$150.....	150	17

Note.—The \$30 overcharge to all low risk drivers in the non-classified scheme may be preferable to the \$150 overcharges to some class members in the classification plan.

TABLE 4
INSURANCE SERVICES OFFICE DATA
DISTRIBUTION OF LARGE INDIVIDUAL OVERCHARGES - ADULTS VS. YOUTHS

Full Coverage Territory	Classification	Premium	% Within Class		% Within Class	
			S/K	Overcharged By At Least \$100	Overcharged By At Least \$300	E/K
02-Newark	8111 Adults	\$ 783.15	1.85	34.7	15.3	2.22
	8212 High Females	1,363.31	3.54	38.6	25.5	2.22
	8712 High Males	2,510.05	3.54	47.7	40.9	2.22
31-Newark Suburban	8111 Adults	\$ 602.20	1.85	5.3	0.0	2.22
	8212 High Females	675.01	3.54	18.3	1.6	2.22
	8712 High Males	1,242.50	3.54	36.9	22.8	2.22
39-Plainfield	8111 Adults	\$ 352.50	1.85	0.3	0.0	2.22
	8212 High Females	592.58	3.54	13.1	0.1	2.22
	8712 High Males	1,091.90	3.54	33.8	18.1	2.22
Compulsory Coverages						
02-Newark	8111 Adults	\$ 441.45	1.82	11.9	0.0	2.17
	8212 Highest Females	702.38	3.38	21.2	3.2	2.17
	8712 Highest Males	1,248.00	3.38	37.8	24.1	2.17
31-Newark Suburban	8111 Adults	\$ 232.70	1.82	0.0	0.0	2.17
	8212 Highest Females	362.68	3.38	0.1	0.0	2.17
	8712 Highest Males	636.70	3.38	17.4	1.1	2.17
39-Plainfield	8111 Adults	\$ 197.70	1.82	0.0	0.0	2.17
	8212 Highest Females	308.28	3.38	0.0	0.0	2.17
	8712 Highest Males	539.70	3.38	10.9	0.0	2.17
S/K = "Split K", E/K = "Equal K",						

Data reflects 12/28/79 rates of the Insurance Services Office together with estimates of the homogeneity analysis from the appendix.

FOOTNOTES

- ¹ New Jersey Department of Insurance Report, p. 20.
- ² Testimony by Verice Mason. Public Hearing on February 23, 1982 before Commission on Sex Discrimination in the Statutes on Sex Discrimination in Insurance, p. 1.
- ³ New Jersey Department of Insurance Report, pp. 3-4.
- ⁴ New Jersey Department of Insurance Report, p. 20.
- ⁵ Arkansas Legislature Report, 7/25/80, p. 2.
- ⁶ Commission testimony by Diana Lee, p. 3.
- ⁷ Commission testimony by Diana Lee, p. 3.
- ⁸ Automobile Insurance Risk Classification Equity & Accuracy, p. 3.
- ⁹ Commission testimony by Diana Lee, p. 3.
- ¹⁰ Figure 1.—Figure 1. Massachusetts book, p. 5.
- ¹¹ Commission testimony by Diana Lee, p. 5.
- ¹² Commission testimony by Verice Mason, p. 13.
- ¹³ Commission testimony by Verice Mason, p. 13.
- ¹⁴ Commission testimony by Verice Mason, pp. 13-14.
- ¹⁵ Commission testimony by Verice Mason, pp. 13-14.
- ¹⁶ Commission testimony by Verice Mason, p. 14.
- ¹⁷ Insurance Commission Report, pp. 91-92.
- ¹⁸ New Jersey Department of Insurance Report.
- ¹⁹ Testimony of Philip Stern at Insurance hearing, Vol. V, p. 36.
- For example, the National Association of independent insurers stated in testimony to the Commission that in New Jersey young males' rates would decrease by 16 percent and young females' would increase by 46 percent if sex were eliminated. These figures, however, are based on the unrealistic assumption that no new causally related factor would be adopted. All states that have eliminated sex and marital status as rating factors have either mandated that new factors be used or have seen competitive market forces develop new factors.
- ²⁰ New Jersey Department of Insurance Report, p. 92.
- ²¹ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 147.
- ²² New Jersey Department of Insurance Report, p. 46.
- ²³ New Jersey Department of Insurance Report, p. 46.
- ²⁴ New Jersey Department of Insurance Report, p. 49.
- ²⁵ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 148.
- ²⁶ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 148.
- ²⁷ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 9.
- ²⁸ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 9.
- ²⁹ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 9.
- ³⁰ Senate hearing on HR 100 first session, pp. 199-201.
- Senate hearing on HR 100 first session, pp. 382-3.
- ³¹ Senate hearing on HR 100 first session, pp. 199-201.
- ³² Senate hearing on HR 100 first session, pp. 199-201.
- ³³ Males $(1/((\$961 \times 13.16) + (\$758 \times 18.21) + (\$330 \times 11.22)) / (13.16 + 18.21 + 11.22)) \times 17,306 \times 10,000 = .246791 \text{ acc/10k mi cost per 10k miles} = 719.883 \times .246791 = \$177.66$.
- Females $(1/((\$825 \times 10.18) + (609 \times 14.52) + (\$270 \times 7.96)) / (10.18 + 14.52 + 7.96)) \times 7,273 \times 10,000 = .449095 \text{ acc/10k mi cost per 10k miles} = 593.704 \times .449095 = \$266.629$.
- ³⁴ Senate hearing on HR 100 second session, pp. 382-3.
- ³⁵ Senate hearing on HR 100 second session, pp. 382-3.
- Males at age 21 = $(1/(17,306/(55/100))) = .00003278088 \text{ accidents/miles}$.
- Females at age 21 = $(1/(7,273/(29/100))) = .0000398735 \text{ accidents/miles}$.
- ³⁶ Males $.00003178088 \times 719.883 = .022878515 \text{ cost/miles of insurance}$.
- $.0000398735 \times 593.704 = .023673056 \text{ cost/miles of insurance}$.
- ³⁷ Males $(1/((17,108 \times 100)/31)) = .00001812 \text{ accidents/10,000 miles cost per mile} = .00001812 \times 719.883 = \$0.130442$.
- ³⁸ Females $(1/((7,011 \times 100)/20)) = .000028526 \text{ accidents/10,000 miles cost per mile} = .000038526 \times 593.704 = \$0.16936$.
- ³⁹ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 18.
- ⁴⁰ Females $.000028536/1.041 = .000027402497$; Males $.0001812/.6935 = .000026128334$. (Mass. book factors.)
- ⁴¹ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 3-4.
- ⁴² Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 3.
- ⁴³ Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 3.
- ⁴⁴ New Jersey Department of Insurance Report, p. 69.
- ⁴⁵ New Jersey Department of Insurance Report, p. 69.
- ⁴⁶ The industry would prefer to use the absence of clearly identifiable subsets as the standard for homogeneity. This standard is no longer an acceptable method of analysis given the sta-

tistical tests available and the availability of computers. Even if the method were acceptable, its application by the industry would make it unacceptable. The industry would separately rate only those identifiable subgroups that have competitive appeal. The statistical methods available are percentage of overall variation explained and the amount of variation with the classification. New Jersey Department of Insurance Report, pp. 69-74.

⁴⁷ New Jersey Department of Insurance Report, p. 677.

⁴⁸ New Jersey Department of Insurance Report, p. 677.

⁴⁹ New Jersey Department of Insurance Report, p. 701.

⁵⁰ New Jersey Department of Insurance Report, p. 679.

⁵¹ New Jersey Department of Insurance Report, p. 679.

⁵² "k" values are statistical measures of the degree of diversity in non-random risk across a population. It is the square of the reciprocal of the coefficient of variation for the underlying claim frequency distribution—Exhibit D-30, Insurance Commission testimony, p. 3.

⁵³ $k = 2.22$ for Newark—Example, New Jersey Department of Insurance Report, p. 679.

⁵⁴ Letter brief of November 18, 198, p. 4, Hartford Insurance Co. in the matter of the automobile insurance classification and related methodologies, docket #A4027-80T7.

⁵⁵ Letter brief of November 18, 198, p. 4, Hartford Insurance Co.

⁵⁶ Letter brief of November 18, 198, p. 4, Hartford Insurance Co.

⁵⁷ New Jersey Department of Insurance Commissioner's findings, April 8.

⁵⁸ New Jersey Department of Insurance Report, p. 213-14.

⁵⁹ These were computed by isolating the gender variable effects. Some studies have reported higher explanatory powers associated with gender. This larger degree of explanatory power is attributable to the order of inclusion of gender. That is, if gender is used to make the first rough cut of the data, its explanatory power will be somewhat higher. To this extent, the relative importance of the gender variable is the result of a self-fulfilling prophecy. New Jersey Department of Insurance Report, p. 212.

⁶⁰ Not available at press time.

⁶¹ A person who had a \$300 premium would pay \$105 toward the insurers expenses, while a young male in Newark might pay \$525 toward the company's expenses—a \$420 difference! (cost=\$.35), Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 121.

⁶² See note 61.

⁶³ Not available at press time.

⁶⁴ If the territory ratio was two (average claim cost is two times the state average) and the driver class ratio was two, the statewide base ratio was \$100, then the hypothetical person would pay $2 \times 2 \times \$100 = \$400$, while a person with a territory factor and a driver class of one would only pay \$100. The overcharge caused by this model for young men in Newark is \$175. New Jersey Department of Insurance Report, p. 431.

⁶⁵ Under the additive method the factors were added together and then combined with the statewide base ratio. For young men in Newark the overcharge caused by the additive model is \$150 less than that caused by the multiplicative model. Automobile Insurance Risk Classification: Equity and Accuracy Division of Insurance Commonwealth of Massachusetts, p. 35.

⁶⁶ New Jersey Department of Insurance Report, p. 432.

⁶⁷ Equal proportion analysis applies only to cases where the state has acted directly or indirectly via "state action." The pervasive regulation and control of insurance companies, the mandated purchase of insurance and the palpable nexus between governmental and private objectives in implementing the regulatory scheme, are the grounds of support of state action.

⁶⁸ "For example, we can conjecture that in Reed, Idaho's apparent premise that women lacked experience in formal business matters (particularly compared to men) would have proved to be accurate in substantially more than 2 percent of all cases. And in both Frontiero and Wiesenfeld, we expressly found appellees' empirical defense of mandatory dependency tests for men but not women to be unsatisfactory, even though we recognized that husbands are still far less likely to be dependent on their wives than vice versa." *Craig v. Boren*, 429 U.S. 190, 202, n.13 (1976).

⁶⁹ California Driver fact book, table 7, p. 7.

⁷⁰ California Driver fact book, table 7, p. 7.

SENATE, NO. 1658

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 16, 1982

By Senators BORNHEIMER, DiFRANCESCO and LIPMAN

Referred to Committee on Labor, Industry and Professions

AN ACT to amend "An act concerning insurance, regulating the making and applying of insurance rates, and providing for the licensing of rating organizations, and repealing sections 17:29-1, 17:29-2, 17:29-3, 17:29-4, 17:29-5, 17:29-6, 17:29-8 and 17:29-9 of the Revised Statutes," approved March 9, 1944 (P. L. 1944, c. 27).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 4 of P. L. 1944, c. 27 (C. 17:29A-4) is amended to
2 read as follows:

3 4. Every rating organization, and every insurer which makes its
4 own rates, shall make rates that are not unreasonably high or
5 inadequate for the safety and soundness of the insurer, and which
6 do not unfairly discriminate between risks in this State involving
7 essentially the same hazards and expense elements, and shall, in
8 rate-making, and in making rating systems:

9 (a) Adopt basic classifications, which shall be used as the basis
10 of all manual, minimum, class, schedule, experience or merit rates,
11 except that no classification plan shall base any standard or rating
12 plan for private passenger automobiles, in whole or in part, di-
13 rectly or indirectly upon the sex or marital status of the persons
14 insured;

15 (b) Adopt reasonable standards for construction, for protective
16 facilities, and for other conditions that materially affect the hazard
17 or peril, which shall be applied in the determination or fixing of
18 rates;

19 (c) Give consideration to past and prospective loss experience,
20 including where pertinent, the conflagration and catastrophe

21 hazards, if any, both within and without the State; to all factors
 22 reasonably related to the kind of insurance involved; to a reason-
 23 able profit for the insurer; and, in the case of participating insurers,
 24 to policyholders' dividends. In the case of fire insurance, considera-
 25 tion shall be given to the latest available experience of the fire
 26 insurance business during a period of not less than 5 years
 27 preceding the year in which rates are made or revised;

28 (d) Give a rate reduction, to be approved by the commissioner,
 29 for fire insurance on structures equipped with operative smoke
 30 detection devices of a design approved by the Commissioner of
 31 Insurance.

1 2. This act shall take effect one year following enactment.

STATEMENT

This bill prohibits the use of sex and marital status as rating factors for private passenger automobile insurance.

The insurance industry has utilized sex and marital status since the 1950's to determine automobile insurance premiums. These factors were selected because of prevailing stereotypes, data limitations and administrative convenience. Utilization of these factors perpetuates socially undesirable discrimination, resulting in unfair and inequitable overcharges and undercharges for many New Jersey drivers.

Neither sex nor marital status are causally related to driver performance. Recent industry data indicates that per mile driven, there is no significant difference between males and females who drive the same amount and have approximately the same driving experience. Men on average, however, drive more than twice as much as women.

Sex and marital status classifications are based on psychological and sociological stereotypes that are no longer appropriate in view of contemporary standards and are not accurate risk estimators. Together, they explain less than 25% of all variation, and are responsible for large premium differentials.

Price classifications based on sex and marital status are, therefore, forms of discrimination which are unfair and result in drivers being charged higher premiums for things they cannot control. There is no causal relationship between sex and marital status and accident risk.